Some years after this, Clovis defeated the Alemanni, or Swabians, in a great battle at Zulpich, near Cologne. In consequence of a vow, as it is said, made during this engagement,* and at the instigation of his wife Clotilda, a princess of Burgundy, he became a convert to Christianity. [A. D. 496.] It would be a fruitless inquiry whether he was sincere in this change; but it is certain, at least, that no policy could have been more successful The Arian sect, which had been early introduced among the barbarous nations, was predominant, though apparently without intolerance,† in the Burgundian and Visigoth courts; but the clergy of Gaul were strenuously attached to the Catholic side, and even before his conversion had favoured the arms of Clovis. They now became his most zealous supporters; and were rewarded by him with artful gratitude, and by his descendants with lavish munificence. [A. D. 507.] Upon the pretence of religion, he attacked Alaric, king of the Visigoths, and, by one great victory near Poitiers overthrowing their empire in Gaul, reduced hem to the maritime province of Septimania, a narrow strip of coast between the Rhone and the Pyrenees. The exploits of Clovis were the reduction of certain independent chiefs of his own tribe and family, who were settled in the neighbourhood of the Rhine.* All these he put to death by force or treachery; for he was cast in the true mould of conquerors, and may justly be ranked among the first of his class, both for the splendour and the guiltiness of his ambition.†

[A. D. 511] Clovis left four sons; one illegitimate, born before his conversion; and three by his queen Clotilda. These four made, it is said, an equal partition of his dominions, which comprehended not only France, but the western and central parts of Germany, besides Bavaria, and perhaps Swabia, which were governed by their own dependant, but hereditary, chiefs. Thierry, the eldest, had what was called Austrasia, the eastern or German division, and fixed his capital at Metz; Clodomir, at Orleans; Childebert, at Paris; and Clotaire, at Soissons.‡ During their reigns the monarchy was aggrandized by the conquest of Burgundy. [A. D. 558.] Clo-

His descendants.

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erning the Roman part of his subjects by no other title, has justly seemed extravagant to later critical inquirers into the history of France. But it may nevertheless be true, that the connexion between him and the empire, and the emblems of Roman magistracy which he bore, reconciled the conquered to their new masters. This is judiciously stated by the Duke de Nivernois. Mém. de l'Acad. des Inscript., tome xx., p. 174. In the sixth century, however, the Greeks appear to have been nearly ignorant of Clovis's countrymen. Nothing can be made out of a passage in Procopius, where he seems to mention the Armoricans under the name Ἀρβορυχοι; and Agathias gives a strangely romantic account of the Franks, whom he extols for their conformity to Roman laws, πολιτειᾳ ως τα πολλα χρωνται Ῥωμαϊκη, να νομοις τοις αυτοις, κ. τ. λ. He goes on to commen their mutual union, and observes particularly that, in partitions of the kingdom, which had frequently been made, they had never taken up arms against each other, nor polluted the land with civil bloodshed. One would almost believe him ironical.

* Gregory of Tours makes a very rhetorical story of this famous vow, which, though we cannot disprove, it may be permitted to suspect.—L. ii., c. 30.

† Hist. de Languedoc, par Vich et Vaissette, tome i., p. 238. Gibbon, c. 37. A specious objection might be drawn from the history of the Gothic monarchies in Italy, as well as Gaul and Spain, to the great principles of religious toleration. These Arian sovereigns treated their Catholic subjects, it may be said, with tenderness, leaving them in possession of every civil privilege, and were rewarded for it by their defection or sedition. But, in answer to this, it may be observed: 1. That the system of persecution adopted by the Vandals in Africa succeeded no better; the Catholics of that province having risen against them upon the landing of Belisarius: 2. That we do not know what insults and discouragements the Catholics of Gaul and Italy may have endured, especially from the Arian bishops, in that age of bigotry; although the administrations of Alaric and Theodoric were liberal and tolerant: 3. That the distinction of Arian and Catholic was intimately connected with that of Goth and Roman, of conqueror and conquered; so that it is difficult to separate the effects of national, from those of sectarian, animosity.

* Modern historians, in enumerating these *reguli*, call one of them King of Mans. But it is difficult to understand how a chieftain, independent of Clovis, could have been settled in that part of France. In fact, Gregory of Tours, our only authority, does not say that this prince, Regnomeris, was King of Mans, but that he was put to death in that city: apud Cenomannis civitatem jussu Chlodovechi interfectus est.

† The reader will be gratified with an admirable memoir, by the Duke de Nivernois, on the policy of Clovis, in the twentieth volume of the Academy of Inscriptions.

‡ Quatuor filii regnum accipiunt, et inter se æquâ lance dividunt.—Greg. Tur., l. iii., c. 1. It would rather perplex a geographer to make an equal division of Clovis's empire into portions, of which Paris, Orleans, Metz, and Soissons should be the respective capitals. I apprehend, in fact, that Gregory's expression is not very precise. The kingdom of Soissons seems to have been the least of the four, and that of Austrasia the greatest. But the partitions made by these princes were exceedingly complex; insulated fragments of territory, and even undivided shares of cities, being allotted to the worse provided brothers, by way of compensation, out of the larger kingdoms. It would be very difficult to ascertain the limits of these minor monarchies. But the French empire was always considered as one, whatever might be the number of its inheritors; and from accidental circumstances it was so frequently reunited as fully to keep up this notion

taire, the youngest brother, ultimately reunited all the kingdoms: but upon his death they were again divided among his four sons, and brought together a second time by another Clotaire [A. D. 613], the grandson to the first. It is a weary and unprofitable task to follow these changes in detail, through scenes of tumult and bloodshed, in which the eye meets with no sunshine, nor can rest upon any interesting spot. It would be difficult, as Gibbon has justly observed, to find anywhere more vice or less virtue. The names of two queens are distinguished even at that age for the magnitude of their crimes: Fredegonde, the wife of Chilperic, of whose atrocities none have doubted; and Brunehaut, queen of Austrasia, who has met with advocates in modern times, less, perhaps, from any fair presumptions of her innocence, than from compassion for the cruel death which she underwent.*

[A. D. 628–638.] But after Dagobert, son of Clotaire II., the kings of France dwindled into personal insignificance, and are generally treated by later historians as *insensati*, or idiots.† The whole power of the kingdom devolved upon the mayors of the palace, originally officers of the household, through whom petitions or representations were laid before the king. The weakness of sovereigns rendered this office important, and still greater weakness suffered it to become elective; men of energetic talents and ambition united it with military command; and the history of France, for half a century, presents no names more conspicuous than those of Ebroin and Grimoald, mayors of Neustria and Austrasia, the western and eastern divisions of the French monarchy.* These, however, met with violent ends; but a more successful usurper of the royal authority was Pepin Heristal, first mayor, and afterward duke, of Austrasia; who united with almost an avowed sovereignty over that division, a paramount command over the French or Neustrian provinces, where nominal kings of the Merovingian family were still permitted to exist. This authority he transmitted to a more renowned hero, his son, Charles Martel, who, after some less important exploits, was called upon to encounter a new and terrible enemy. The Saracens, after subjugating Spain, had penetrated into the very heart of France. Charles Martel gained a complete victory over them between Tours and Poitiers† [A. D. 732], in which 300,000 Mahometans are hyperbolically asserted to have fallen. The reward of this victory was the province of Septimania, which the Saracens had conquered from the Visigoths.‡

Their degeneracy.

Mayors of the palace.

Such powerful subjects were not likely to remain long contented without the crown; but the

Change in the royal family.

* Every history will give a sufficient epitome of the Merovingian dynasty. The facts of these times are of little other importance than as they impress on the mind a thorough notion of the extreme wickedness of almost every person concerned in them, and consequently of the state to which society was reduced. But there is no advantage in crowding the memory with barbarian wars and assassinations. For the question about Brunehaut's character, who has had partisans almost as enthusiastic as those of Mary of Scotland, the reader may consult Pasquier, Recherches de la France, l. viii., or Velly, Hist. de France, tome i., on one side, and a dissertation by Gaillard, in the Memoirs of the Academy of Inscriptions, tome xxx., on the other. The last is unfavourable to Brunehaut, and perfectly satisfactory to my judgment.

† An ingenious attempt is made by the Abbé Vertot, Mém. de l'Académie, tome vi., to rescue these monarchs from this long-established imputation. But the leading fact is irresistible, that all the royal authority was lost during their reigns. However, the best apology seems to be, that, after the victories of Pepin Heristal, the Merovingian kings were, in effect, conquered, and their inefficiency was a matter of necessary submission to a master.

* The original kingdoms of Soissons, Paris, and Orleans, were consolidated into that denominated Neustria, to which Burgundy was generally appendant, though distinctly governed by a mayor of its own election. But Aquitaine, the exact bounds of which I do not know, was, from the time of Dagobert I., separated from the rest of the monarchy, under a ducal dynasty, sprung from Aribert, brother of that monarch.

† Tours is above seventy miles distant from Poitiers; but I do not find that any French antiquary has been able to ascertain the place of this great battle with more precision; which is remarkable, since, after so immense a slaughter, we should expect the testimony of "grandia effossis ossa sepulcris."

The victory of Charles Martel has immortalized his name, and may justly be reckoned among those few battles of which a contrary event would have essentially varied the drama of the world in all its subsequent scenes; with Marathon, Arbela, the Metaurus, Châlons, and Leipsic. Yet do we not judge a little too much by the event, and follow, as usual, in the wake of fortune? Has not more frequent experience condemned those who set the fate of empires upon a single cast, and risk a general battle with invaders, whose greater peril is in delay? Was not this the fatal error by which Roderic had lost his kingdom? Was it possible that the Saracens could have retained any permanent possession of France, except by means of a victory? And did not the contest upon the broad campaign of Poitou afford them a considerable prospect of success, which a more cautious policy would have withheld?

‡ This conquest was completed by Pepin in 759. The inhabitants preserved their liberties by treaty; and Vaissette deduces from this solemn assurance the privileges of Languedoc. Hist. de Lang., tome i., p. 412.

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VIEW

OF THE

STATE OF EUROPE

DURING

THE MIDDLE AGES.

BY HENRY HALLAM.

Εκ Χάεος δ' Ερεβός τε μέλαινά τε Νὺξ ἐγένοντο·
Νυκτὸς δ' αὖτ' Αιθήρ τε καὶ Ἡμέρη ἐξεγένοντο
ΗΣΙΟΔΟΣ

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PREFACE.

It is the object of the present work to exhibit, in a series of historical dissertations, a comprehensive survey of the chief circumstances that can interest a philosophical inquirer during the period usually denominated the Middle Ages. Such an undertaking must necessarily fall under the class of historical abridgments: yet there will perhaps be found enough to distinguish it from such as have already appeared. Many considerable portions of time, especially before the twelfth century, may justly be deemed so barren of events worthy of remembrance, that a single sentence or paragraph is often sufficient to give the character of entire generations, and of long dynasties of obscure kings

"Non ragioniam di lor, ma guarda e passa."

And even in the more pleasing and instructive parts of this middle period, it has been my object to avoid the dry composition of annals, and aiming, with what spirit and freedom I could, at a just outline rather than a miniature, to suppress all events that did not appear essentially concatenated with others or illustrative of important conclusions. But as the modes of governmen. and constitutional laws which prevailed in various countries of Europe, and especially in England, seemed to have been less fully dwelt upon in former works of this description than military or civil transactions, while they were deserving of far more attention, I have taken pains to give a true representation of them, and in every instance to point out the sources from which the reader may derive more complete and original information.

Nothing can be farther from my wishes than that the following pages should be judged according to the critical laws of historical composition. Tried in such a balance, they would be eminently defective. The limited extent of this work, compared with the subjects it embraces, as well as its partaking more of the character of political dissertation than of narrative, must necessarily preclude that circumstantial delineation of events and of characters upon which the beauty as well as usefulness of a regular history so mainly depends. Nor can I venture to assert that it will be found altogether perspicuous to those who are destitute of any previous acquaintance with the period to which it relates; though I have only presupposed, strictly speaking, a knowledge of the common facts of English history, and have endeavoured to avoid, in treating of other countries, those allusive references, which imply more information in the reader than the author designs to communicate. But the arrangement which I have adopted has sometimes rendered it necessary to anticipate both names and facts, which are to find a more definite place in a subsequent part of the work.

This arrangement is probably different from that of any former historical retrospect. Every chapter of the following volumes completes its particular subject, and may be considered in some degree as independent of the rest. The order, consequently, in which they are read, will not be very material though of course I should rather prefer that in which they are at present dis-

posed. A solicitude to avoid continual transitions, and to give free scope to the natural association of connected facts, has dictated this arrangement, to which I confess myself partial. And I have found its inconveniences so trifling in composition, that I cannot believe they will occasion much trouble to the reader.

The first chapter comprises the history of France from the invasion of Clovis to the expedition, *exclusively*, of Charles VIII. against Naples. It is not possible to fix accurate limits to the Middle Ages: but though the ten centuries from the fifth to the fifteenth seem, in a general point of view, to constitute that period, a less arbitrary division was necessary to render the commencement and conclusion of an historical narrative satisfactory. The continuous chain of transactions on the stage of human society is ill divided by mere lines of chronological demarcation. But as the subversion of the western empire is manifestly the natural termination of ancient history, so the establishment of the Franks in Gaul appears the most convenient epoch for the commencement of a new period. Less difficulty occurred in finding the other limit. The invasion of Naples by Charles VIII. was the event that first engaged the principal states of Europe in relations of alliance or hostility which may be deduced to the present day, and is the point at which every man who traces backward its political history will be obliged to pause It furnishes a determinate epoch in the annals of Italy and France, and nearly coincides with events which naturally terminate the history of the Middle Ages in other countries.

The feudal system is treated in the second chapter, which I have subjoined to the history of France, with which it has a near connexion. Inquiries into the antiquities of that jurisprudence occupied more attention in the last age than at present, and their dryness may prove repulsive to many readers. But there is no royal road to the knowledge of law; nor can any man render an obscure and intricate disquisition either perspicuous or entertaining. That the feudal system is an important branch of historical knowledge will not be disputed, when we consider not only its influence upon our own constitution, but that one of the parties which at present divide a neighbouring kingdom professes to appeal to the original principles of its monarchy, as they subsisted before the subversion of that polity.

The four succeeding chapters contain a sketch, more or less rapid and general, of the histories of Italy, of Spain, of Germany, and of the Greek and Saracenic empires. In the seventh I have endeavoured to develop the progress of ecclesiastical power, a subject eminently distinguishing the Middle Ages, and of which a concise and impartial delineation has long been desirable.

The English constitution furnishes materials for the eighth chapter. I cannot hope to have done sufficient justice to this theme, which has cost me considerable labour; but it is worthy of remark, that since the treatise of Nathaniel Bacon, itself open to much exception, there has been no historical development of our constitution, founded upon extensive researches, or calculated to give a just notion of its character. For those parts of Henry's history which profess to trace the progress of government are still more jejune than the rest of his volumes; and the work of Professor Millar, of Glasgow, however pleasing from its liberal spirit, displays a fault too common among the philosophers of his country, that of theorizing upon an imperfect induction, and very often upon a total misapprehension of particular facts.

The ninth and last chapter relates to the general state of society in Europe during the Middle Ages, and comprehends the history of commerce, of manners, and of literature. None however of these are treated in detail, and the whole chapter is chiefly designed as supplemental to the rest, in order to vary the relations under which events may be viewed, and to give a more adequate sense of the spirit and character of the Middle Ages.

In the execution of a plan far more comprehensive than what, with a due consideration either of my abilities or opportunities, I ought to have undertaken, it would be strangely presumptuous to hope that I can have rendered myself invulnerable to criticism. Even if flagrant errors should not be frequently detected, yet I am aware that a desire of conciseness has prevented the sense of some passages from appearing sufficiently distinct; and though I cannot hold myself generally responsible for omissions, in a work which could only be brought within a reasonable compass by the severe retrenchment of superfluous matter, it is highly probable that defective information, forgetfulness, or too great a regard for brevity, has caused me to pass over many things which would have materially illustrated the various subjects of these inquiries.

I dare not, therefore, appeal with confidence to the tribunal of those superior judges, who, having bestowed a more undivided attention on the particular objects that have interested them, may justly deem such general sketches imperfect and superficial; but my labours will not have proved fruitless, if they shall conduce to stimulate the reflection, to guide the researches, to correct the prejudices, or to animate the liberal and virtuous sentiments of inquisitive youth:

"Mi satis ampla
Merces et mihi grande decus, sim ignotus in ævum
Tum licet, externo penitusque inglorius orbe."

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VIEW

OF

THE STATE OF EUROPE

DURING THE MIDDLE AGES.

CHAPTER I.

THE HISTORY OF FRANCE, FROM ITS CONQUEST BY CLOVIS TO THE INVASION OF NAPLES BY CHARLES VIII.

PART I.

Fall of the Roman Empire.—Invasion of Clovis.—First race of French Kings.—Accession of Pepin.—State of Italy.—Charlemagne.—His Reign and Character.—Louis the Debonair.—His Successors.—Calamitous state of the Empire in the ninth and tenth Centuries.—Accession of Hugh Capet.—His first Successors.—Louis VII.—Philip Augustus.—Conquest of Normandy.—War in Languedoc.—Louis IX.—His Character.—Digression upon the Crusades.—Philip III.—Philip IV.—Aggrandizement of French Monarchy under his Reign.—Reigns of his Children.—Question of Salique-Law.—Claim of Edward III.

Before the conclusion of the fifth century, the mighty fabric of empire, which valour and policy had founded upon the seven hills of Rome, was finally overthrown, in all the west of Europe, by the barbarous nations from the north, whose martial energy and whose numbers were irresistible. A race of men, formerly unknown or despised, had not only dismembered that proud sovereignty, but permanently settled themselves in its fairest provinces, and imposed their yoke upon the ancient possessors. The Vandals were masters of Africa; the Suevi held part of Spain; the Visigoths possessed the remainder, with a large portion of Gaul; the Burgundians occupied the provinces watered by the Rhone and Saone; the Ostrogoths almost all Italy. The northwest of Gaul, between the Seine and the Loire, some writers have filled with an Armorican republic;* while the remainder was still nominally subject to the Roman empire, and governed by a certain Syagrius, rather with an independent than a deputed authority.

Subversion of the Roman Empire.

New settlements of the barbarous nations.

[A. D. 486.] At this time, Clovis, king of the Salian Franks, a tribe of Germans long connected with Rome, and originally settled upon the right bank of the Rhine, but who had latterly penetrated as far as Tournay and Cambray,* invaded Gaul, and defeated Syagrius at Soissons. The result of this victory was the subjugation of those provinces which had previously been considered as Roman. But as their allegiance had not been very strict, so their loss was not very severely felt; since the emperors of Constantinople were not too proud to confer upon Clovis the titles of consul and patrician, which he was too prudent to refuse.†

Invasion of Clovis.

* It is impossible not to speak skeptically as to this republic, or rather confederation of independent cities under the rule of their respective bishops, which Du Bos has with great ingenuity raised upon very slight historical evidence, and in defiance of the silence of Gregory, whose see of Tours bordered upon their supposed territory. But his hypothesis is not to be absolutely rejected, because it is by no means deficient in internal probability, and the early part of Gregory's history is brief and negligent. Du Bos, Hist. Critique de l'Etablissemens des Français dans les Gaules, t. i., p. 253. Gibbon, c. 38, after following Du Bos in his text, whispers as usual, his suspicions in a note.

* The system of Père Daniel, who denies any permanent settlement of the Franks on the left bank of the Rhine before Clovis, seems incapable of being supported. It is difficult to resist the presumption that arises from the discovery of the tomb and skeleton of Childeric, father of Clovis, at Tournay, in 1653. See Montfaucon, Monumens de la Monarchie Française, tome i., p. 10.

† The theory of Du Bos, who considers Clovis as a sort of lieutenant of the emperors, and as gov

Some years after this, Clovis defeated the Alemanni, or Swabians, in a great battle at Zulpich, near Cologne. In consequence of a vow, as it is said, made during this engagement,* and at the instigation of his wife Clotilda, a princess of Burgundy, he became a convert to Christianity. [A. D. 496.] It would be a fruitless inquiry whether he was sincere in this change; but it is certain, at least, that no policy could have been more successful The Arian sect, which had been early introduced among the barbarous nations, was predominant, though apparently without intolerance,† in the Burgundian and Visigoth courts; but the clergy of Gaul were strenuously attached to the Catholic side, and even before his conversion had favoured the arms of Clovis. They now became his most zealous supporters; and were rewarded by him with artful gratitude, and by his descendants with lavish munificence. [A. D. 507.] Upon the pretence of religion, he attacked Alaric, king of the Visigoths, and, by one great victory near Poitiers overthrowing their empire in Gaul, reduced hem to the maritime province of Septimania, a narrow strip of coast between the Rhone and the Pyrenees. The exploits of Clovis were the reduction of certain independent chiefs of his own tribe and family, who were settled in the neighbourhood of the Rhine.* All these he put to death by force or treachery; for he was cast in the true mould of conquerors, and may justly be ranked among the first of his class, both for the splendour and the guiltiness of his ambition.†

[A. D. 511] Clovis left four sons; one illegitimate, born before his conversion; and three by his queen Clotilda. These four made, it is said, an equal partition of his dominions, which comprehended not only France, but the western and central parts of Germany, besides Bavaria, and perhaps Swabia, which were governed by their own dependant, but hereditary, chiefs. Thierry, the eldest, had what was called Austrasia, the eastern or German division, and fixed his capital at Metz; Clodomir, at Orleans; Childebert, at Paris; and Clotaire, at Soissons.‡ During their reigns the monarchy was aggrandized by the conquest of Burgundy. [A. D. 558.] Clo-

His descendants.

erning the Roman part of his subjects by no other title, has justly seemed extravagant to later critical inquirers into the history of France. But it may nevertheless be true, that the connexion between him and the empire, and the emblems of Roman magistracy which he bore, reconciled the conquered to their new masters. This is judiciously stated by the Duke de Nivernois. Mém. de l'Acad. des Inscript., tome xx., p. 174. In the sixth century, however, the Greeks appear to have been nearly ignorant of Clovis's countrymen. Nothing can be made out of a passage in Procopius, where he seems to mention the Armoricans under the name Ἀρβορυχοι; and Agathias gives a strangely romantic account of the Franks, whom he extols for their conformity to Roman laws, πολιτειᾳ ὡς τα πολλα χρωνται Ῥωμαϊκῃ, κα νομοις τοις αυτοις, κ. τ. λ. He goes on to commen their mutual union, and observes particularly that, in partitions of the kingdom, which had frequently been made, they had never taken up arms against each other, nor polluted the land with civil bloodshed. One would almost believe him ironical.

* Gregory of Tours makes a very rhetorical story of this famous vow, which, though we cannot disprove, it may be permitted to suspect.—L. ii., c. 30.

† Hist. de Languedoc, par Vich et Vaissette, tome i., p. 238. Gibbon, c. 37. A specious objection might be drawn from the history of the Gothic monarchies in Italy, as well as Gaul and Spain, to the great principles of religious toleration. These Arian sovereigns treated their Catholic subjects, it may be said, with tenderness, leaving them in possession of every civil privilege, and were rewarded for it by their defection or sedition. But, in answer to this, it may be observed: 1 That the system of persecution adopted by the Vandals in Africa succeeded no better; the Catholics of that province having risen against them upon the landing of Belisarius: 2. That we do not know what insults and discouragements the Catholics of Gaul and Italy may have endured, especially from the Arian bishops, in that age of bigotry; although the administrations of Alaric and Theodoric were liberal and tolerant: 3. That the distinction of Arian and Catholic was intimately connected with that of Goth and Roman, of conqueror and conquered; so that it is difficult to separate the effects of national, from those of sectarian, animosity.

* Modern historians, in enumerating these reguli, call one of them King of Mans. But it is difficult to understand how a chieftain, independent of Clovis, could have been settled in that part of France. In fact, Gregory of Tours, our only authority, does not say that this prince, Regnomeris, was King of Mans, but that he was put to death in that city: apud Cenomannis civitatem jussu Chlodovechi interfectus est.

† The reader will be gratified with an admirable memoir, by the Duke de Nivernois, on the policy of Clovis, in the twentieth volume of the Academy of Inscriptions.

‡ Quatuor filii regnum accipiunt, et inter se æquâ lance dividunt.—Greg. Tur., l. iii., c. 1. It would rather perplex a geographer to make an equal division of Clovis's empire into portions, of which Paris, Orleans, Metz, and Soissons should be the respective capitals. I apprehend, in fact, that Gregory's expression is not very precise. The kingdom of Soissons seems to have been the least of the four, and that of Austrasia the greatest. But the partitions made by these princes were exceedingly complex; insulated fragments of territory, and even undivided shares of cities, being allotted to the worse provided brothers, by way of compensation, out of the larger kingdoms. It would be very difficult to ascertain the limits of these minor monatchies. But the French empire was always considered as one, whatever might be the number of its inheritors; and from accidental circumstances it was so frequently reunited as fully to keep up this notion

taire, the youngest brother, ultimately reunited all the kingdoms: but upon his death they were again divided among his four sons, and brought together a second time by another Clotaire [A. D. 613], the grandson to the first. It is a weary and unprofitable task to follow these changes in detail, through scenes of tumult and bloodshed, in which the eye meets with no sunshine, nor can rest upon any interesting spot. It would be difficult, as Gibbon has justly observed, to find anywhere more vice or less virtue. The names of two queens are distinguished even at that age for the magnitude of their crimes: Fredegonde, the wife of Chilperic, of whose atrocities none have doubted; and Brunehaut, queen of Austrasia, who has met with advocates in modern times, less, perhaps, from any fair presumptions of her innocence, than from compassion for the cruel death which she underwent.*

[A. D. 628–638.] But after Dagobert, son of Clotaire II., the kings of France dwindled into personal insignificance, and are generally treated by later historians as *insensati*, or idiots.† The whole power of the kingdom devolved upon the mayors of the palace, originally officers of the household, through whom petitions or representations were laid before the king. The weakness of sovereigns rendered this office important, and still greater weakness suffered it to become elective; men of energetic talents and ambition united it with military command; and the history of France, for half a century, presents no names more conspicuous than those of Ebroin and Grimoald, mayors of Neastria and Austrasia, the western and eastern divisions of the French monarchy.* These, however, met with violent ends; but a more successful usurper of the royal authority was Pepin Heristal, first mayor, and afterward duke, of Austrasia; who united with almost an avowed sovereignty over that division, a paramount command over the French or Neustrian provinces, where nominal kings of the Merovingian family were still permitted to exist. This authority he transmitted to a more renowned hero, his son, Charles Martel, who, after some less important exploits, was called upon to encounter a new and terrible enemy. The Saracens, after subjugating Spain, had penetrated into the very heart of France. Charles Martel gained a complete victory over them between Tours and Poitiers† [A. D. 732], in which 300,000 Mahometans are hyperbolically asserted to have fallen. The reward of this victory was the province of Septimania, which the Saracens had conquered from the Visigoths.‡

Their degeneracy.

Mayors of the palace.

Such powerful subjects were not likely to remain long contented without the crown; but the

Change in the royal family.

* Every history will give a sufficient epitome of the Merovingian dynasty. The facts of these times are of little other importance than as they impress on the mind a thorough notion of the extreme wickedness of almost every person concerned in them, and consequently of the state to which society was reduced. But there is no advantage in crowding the memory with barbarian wars and assassinations. For the question about Brunehaut's character, who has had partisans almost as enthusiastic as those of Mary of Scotland, the reader may consult Pasquier, Recherches de la France, l. viii., or Velly, Hist. de France, tome i., on one side, and a dissertation by Gaillard, in the Memoirs of the Academy of Inscriptions, tome xxx., on the other. The last is unfavourable to Brunehaut, and perfectly satisfactory to my judgment.

† An ingenious attempt is made by the Abbé Vertot, Mém. de l'Académie, tome vi., to rescue these monarchs from this long-established imputation. But the leading fact is irresistible, that all the royal authority was lost during their reigns. However, the best apology seems to be, that, after the victories of Pepin Heristal, the Merovingian kings were, in effect, conquered, and their inefficiency was a matter of necessary submission to a master.

* The original kingdoms of Soissons, Paris, and Orleans, were consolidated into that denominated Neustria, to which Burgundy was generally appendant, though distinctly governed by a mayor of its own election. But Aquitaine, the exact bounds of which I do not know, was, from the time of Dagobert I., separated from the rest of the monarchy, under a ducal dynasty, sprung from Aribert, brother of that monarch.

† Tours is above seventy miles distant from Poitiers; but I do not find that any French antiquary has been able to ascertain the place of this great battle with more precision; which is remarkable, since, after so immense a slaughter, we should expect the testimony of "grandia effossis ossa sepulcris."

The victory of Charles Martel has immortalized his name, and may justly be reckoned among those few battles of which a contrary event would have essentially varied the drama of the world in all its subsequent scenes; with Marathon, Arbela, the Metaurus, Châlons, and Leipsic. Yet do we not judge a little too much by the event, and follow, as usual, in the wake of fortune? Has not more frequent experience condemned those who set the fate of empires upon a single cast, and risk a general battle with invaders, whose greater peril is in delay? Was not this the fatal error by which Roderic had lost his kingdom? Was it possible that the Saracens could have retained any permanent possession of France, except by means of a victory? And did not the contest upon the broad campaign of Poitou afford them a considerable prospect of success, which a more cautious policy would have withheld?

‡ This conquest was completed by Pepin in 759. The inhabitants preserved their liberties by treaty; and Vaissette deduces from this solemn assurance the privileges of Languedoc. Hist. de Lang., tome i., p. 412.

Accession of Pepin.

circumstances under which it was transferred from the race of Clovis are connected with one of the most important revolutions in the history of Europe. [A. D. 752.] The mayor Pepin, inheriting his father Charles Martel's talents and ambition, made, in the name and with the consent of the nation, a solemn reference to the pope, Zacharias, as to the deposition of Childeric III., under whose nominal authority he himself was reigning. The decision was favourable; that he who possessed the power, should also bear the title of king. The unfortunate Merovingian was dismissed into a convent, and the Franks, with one consent, raised Pepin to the throne, the founder of a more illustrious dynasty. In order to judge of the importance of this revolution to the see of Rome, as well as to France, we must turn our eyes upon the affairs of Italy.

The dominion of the Ostrogoths was annihilated by the arms of Belisarius and Narses in the sixth century. But not long afterward, the Lombards, a people for some time settled in Pannonia, not only subdued that northern part of Italy which has retained their name, but, extending themselves southward, formed the powerful dutchies of Spoleto and Benevento. The residence of their kings was in Pavia; but the hereditary vassals, who held those two dutchies, might be deemed almost independent sovereigns.* The rest of Italy was governed by exarchs, deputed by the Greek emperors, and fixed at Ravenna. In Rome itself, neither the people, nor the bishops, who had already conceived in part their schemes of ambition, were much inclined to endure the superiority of Constantinople; yet their disaffection was counterbalanced by the inveterate hatred, as well as jealousy, with which they regarded the Lombards. But an impolitic and intemperate persecution, carried on by two or three Greek emperors against a favourite superstition, the worship of images, excited commotions throughout Italy, of which the Lombards took advantage, and easily wrested the exarchate of Ravenna from the eastern empire. [A. D. 752.] It was far from the design of the popes to see their nearest enemies so much aggrandized; and any effectual assistance from the Emperor Constantine Copronymus would have kept Rome still faithful But having no hope from his arms, and provoked by his obstinate intolerance, the pontiffs had recourse to France;* and the service they had rendered to Pepin led to reciprocal obligations of the greatest magnitude. At the request of Stephen II., the new king of France descended from the Alps, drove the Lombards from their recent conquests, and conferred them upon the pope. This memorable donation nearly comprised the modern provinces of Romagna and the March of Ancona.†

The Lombards.

They reduce the exarchate of Ravenna.

which Pepin reconquers, and bestows on the pope.

[A. D. 768.] The state of Italy, which had undergone no change for nearly two centuries, was now rapidly verging to a great revolution. Under the shadow of a mighty name, the Greek empire had concealed the extent of its decline. That charm was now broken: and the Lombard kingdom, which had hitherto appeared the only competitor in the lists, proved to have lost its own energy in awaiting the occasion for its display. France was far more than a match for the power of Italy, even if she had not been guided by the towering ambition and restless activity of the son of Pepin. It was almost the first exploit of Charlemagne, after the death of his brother Carloman had reunited the Frankish empire under his dominion‡ [A. D. 772], to subjugate the kingdom of Lombardy. [A. D. 774.] Neither Pavia nor Verona, its most considerable cities, interposed any material delay to his arms; and the chief resistance he encountered was from the dukes of Friuli and Benevento, the latter of whom could never be brought into thorough subjection to the conqueror. Italy, however, be the cause what it might, seems to have tempted Charlemagne far less than the dark forests of

Charlemagne.

He conquers Lombardy;

* The history, character, and policy of the Lombards are well treated by Gibbon, c. 45 See, too, the fourth and fifth books of Giannone, and some papers by Gaillard in the Memoirs of the Academy of Inscriptions, tomes xxxii., xxxv., xlv

* There had been some previous overtures to Charles Martel, as well as to Pepin himself; the habitual sagacity of the court of Rome perceiving the growth of a new western monarchy, which would be, in faith and arms, their surest ally.—Muratori, Ann. d'Ital., A. D. 741.

† Giannone, l. v., c. 2.

‡ Carloman, younger brother of Charles, took the Austrasian or German provinces of the empire. The custom of partition was so fully established, that those wise and ambitious princes, Charles Martel, Pepin, and Charlemagne himself, did not venture to thwart the public opinion by introducing primogeniture. Carloman would not long have stood against his brother; who, after his death, usurped the inheritance of his two infant children.

Germany For neither the southern provinces nor Sicily, could have withstood his power, if it had been steadily directed against them. Even Spain hardly drew so much of his attention, as the splendour of the prize might naturally have excited. He gained, however, a very important accession to his empire, by conquering from the Saracens the territory contained between the Pyrenees and the Ebro. This was formed into the Spanish March, governed by the Count of Barcelona, part of which, at least, must be considered as appertaining to France till the twelfth century.*

part of Spain;

But the most tedious and difficult achievement of Charlemagne was the reduction of the Saxons. The wars with this nation, who occupied nearly the modern circles of Westphalia and Lower Saxony, lasted for thirty years. Whenever the conqueror withdrew his armies, or even his person, the Saxons broke into fresh rebellion; which his unparalleled rapidity of movement seldom failed to crush without delay. From such perseverance on either side, destruction of the weaker could alone result. A large colony of Saxons were finally transplanted into Flanders and Brabant, countries hitherto ill-peopled, in which their descendants preserved the same unconquerable spirit of resistance to oppression. Many fled to the kingdoms of Scandinavia, and, mingling with the Northmen, who were just preparing to run their memorable career, revenged upon the children and subjects of Charlemagne the devastation of Saxony. The remnant embraced Christianity, their aversion to which had been the chief cause of their rebellions, and acknowledged the sovereignty of Charlemagne; a submission, which even Witikind, the second Arminius of Germany, after such irresistible conviction of her destiny, did not disdain to make. But they retained, in the main, their own laws; they were governed by a duke of their own nation, if not of their own election; and for many ages they were distinguished by their original character among the nations of Germany.

and Saxony.

The successes of Charlemagne on the eastern frontier of his empire against the Sclavonians of Bohemia, and Huns or Avars of Pannonia, though obtained with less cost, were hardly less eminent. In all his wars, the newly-conquered nations, or those whom fear had made dependant allies, were employed to subjugate their neighbours; and the incessant waste of fatigue and the sword was supplied by a fresh population that swelled the expanding circle of dominion. I do not know that the limits of the new western empire are very exactly defined by contemporary writers, nor would it be easy to appreciate the degree of subjection in which the Sclavonian tribes were held As an organized mass of provinces, regularly governed by imperial officers, it seems to have been nearly bounded, in Germany, by the Elbe, the Saale, the Bohemian mountains, and a line drawn from thence crossing the Danube above Vienna, and prolonged to the Gulf of Istria Part of Dalmatia was comprised in the dutchy of Friuli. In Italy, the empire extended not much beyond the modern frontier of Naples, if we exclude, as was the fact, the dutchy of Benevento from any thing more than a titular subjection The Spanish boundary, as has been said already, was the Ebro.*

Extent of his dominions

[A. D. 800.] A seal was put to the glory of Charlemagne, when Leo III., in the name of the Roman people, placed upon his head the imperial crown. His father, Pepin, had borne the title of patrician, and he had himself exercised, with that title, a regular sovereignty over Rome.†

His Coronation as emperor.

* The counts of Barcelona always acknowledged the feudal superiority of the kings of France, till some time after their own title had been merged in that of kings of Aragon. In 1180, legal instruments executed in Catalonia ceased to be dated by the year of the King of France; and as here certainly remained no other mark of dependance, the separation of the principality may be referred to that year. But the rights of the French crown over it were finally ceded by Louis IX., in 1258.—De Marca, Marca Hispanica, p. 514. Art de vérifier les Dates t. ii., p. 291.

* I follow in this the map of Koch, in his Tableau des Révolutions de l'Europe, tome i. That of Vaugondy, Paris, 1752, includes the dependant Sclavonic tribes, and carries the limit of the empire to the Oder and frontiers of Poland. The authors of L'Art de vérifier les Dates extend it to the Raab. It would require a long examination to give a precise statement.

† The patricians of the lower empire were governors sent from Constantinople to the provinces. Rome had long been accustomed to their name and power. The subjection of the Romans, both clergy and laity, to Charlemagne, as well before as after he bore the imperial name, seems to be established.—See Dissertation Historique, par Le Blanc subjoined to his Traité des Monnoyes de France, p. 18, and St. Marc, Abrégé Chronologique de l'Histoire de l'Italie, t. i. The first of these writers does not allow that Pepin exercised any authority at Rome. A good deal of obscurity rests over its internal government for near fifty years; but there is some reason to believe that the nominal sovereignty of the Greek emperors was not entirely abrogated.—Muratori, Annali d'Italia ad ann. 772

Money was coined in his name, and an oath of fidelity was taken by the clergy and people. But the appellation of emperor seemed to place his authority over all his subjects on a new footing. It was full of high and indefinite pretension, ending to overshadow the free election of the Franks by a fictitious descent from Augustus. A fresh oath of fidelity to him as emperor was demanded from his subjects. His own discretion, however, prevented him from affecting those more despotic prerogatives, which the imperial name might still be supposed to convey.

His character.

In analyzing the characters of heroes, it is hardly possible to separate altogether the share of fortune from their own. The epoch made by Charlemagne in the history of the world, the illustrious families which prided themselves in him as their progenitor, the very legions of romance, which are full of his fabulous exploits, have cast a lustre around his head, and testify the greatness that has imbodied itself in his name. None indeed of Charlemagne's wars can be compared with the Saracenic victory of Charles Martel; but *that* was a contest for freedom, *his* for conquest; and fame is more partial to successful aggression than to patriotic resistance. As a scholar, his acquisitions were probably little superior to those of his unrespected son; and in several points of view the glory of Charlemagne might be extenuated by an analytical dissection.* But, rejecting a mode of judging equally uncandid and fallacious, we shall find that he possessed in every thing that grandeur of conception which distinguishes extraordinary minds. Like Alexander, he seemed born for universal innovation: in a life restlessly active, we see him reforming the coinage, and establishing the legal divisions of money; gathering about him the learned of every country; founding schools, and collecting libraries; interfering, but with the tone of a king, in religious controversies; aiming, though prematurely, at the formation of a naval force; attempting, for the sake of commerce, the magnificent enterprise of uniting the Rhine and Danube;* and meditating to mould the discordant codes of Roman and barbarian laws into a uniform system.

The great qualities of Charlemagne were indeed alloyed by the vices of a barbarian and a conqueror. Nine wives whom he divorced with very little ceremony, attest the license of his private life, which his temperance and frugality can hardly be said to redeem.† Unsparing of blood, though not constitutionally cruel, and wholly indifferent to the means which his ambition prescribed, he beheaded in one day four thousand Saxons; an act of atrocious butchery, after which his persecuting edicts, pronouncing the pain of death against those who refused baptism, or even who ate flesh during Lent, seem scarcely worthy of notice. This union of barbarous ferocity with elevated views of national improvement, might suggest the parallel of Peter the Great. But the degrading habits and brute violence of the Muscovite place him at an immense distance from the restorer of the empire.

A strong sympathy for intellectual excellence was the leading characteristic of Charlemagne, and this undoubtedly biased him in the chief political error of his conduct, that of encouraging the power and pretensions of the hierarchy. But, perhaps, his greatest eulogy is written in the disgraces of succeeding times, and the miseries of Europe. He stands alone like a beacon upon a waste, or a rock in the broad ocean. His sceptre was as the bow of Ulysses, which could not be drawn by any weaker hand. In the dark ages of European history, the reign of Charlemagne affords a solitary resting place between two long periods of turbulence and ignominy, deriving the advan-

St. Marc, t. i., p 356, 372. A mosaic, still extant in the Lateran palace, represents our Saviour giving the keys to St. Peter with one hand, and with the other a standard to a crowned prince, bearing the inscription, Constantine V. But Constantine V. did not begin to reign till 780; and if this piece of workmanship was made under Leo III., as the authors of L'Art de vérifier les Dates imagine, it could not be earlier than 795.—T. i., p. 262. Muratori, ad ann. 798. However this may be, there can be no question that a considerable share of jurisdiction and authority was practically exercised by the popes during this period.—Vid. Murat., ad ann. 789.

* Eginhard attests his ready eloquence, his perfect mastery of Latin, his knowledge of Greek, so far as to read it, his acquisitions in logic, grammar, rhetoric, and astronomy. But the anonymous author of the life of Louis the Debonair attributes of these accomplishments to that unfortunate prince

* See an essay upon this project in the Memoirs of the Academy of Inscriptions, tome xviii. The rivers which were designed to form the links of this junction were the Altmuhl, the Regnitz, and the Maine; but their want of depth, and the sponginess of the soil, appear to present insuperable impediments to its completion.

† I apprehend that there is no foundation for the charge of an incestuous passion for his daughters, which Voltaire calls *une foiblesse*. The error seems to have originated in a misinterpreted passage of Eginhard. These ladies, indeed, were far from being models of virtue, and their lives brought scandal upon the royal palace.

tages of contrast both from that of the preceding dynasty, and of a posterity for whom he had formed an empire which they were unworthy and unequal to maintain.*

[A. D. 814.] Pepin, the eldest son of Louis the Debonair. Charlemagne, died before him, leaving a natural son, named Bernard.† Even if he had been legitimate, the right of representation was not at all established during these ages; indeed, the general prejudice seems to have inclined against it. Bernard, therefore, kept only the kingdom of Italy, which had been transferred to his father; while Louis, the younger son of Charlemagne, inherited the empire. [A. D. 817.] But, in a short time, Bernard, having attempted a rebellion against his uncle, was sentenced to lose his eyes, which occasioned his death; a cruelty more agreeable to the prevailing tone of manners, than to the character of Louis, who bitterly reproached himself for the severity he had been persuaded to use.

Under this prince, called by the Italians the Pious, and by the French the Debonair, or Good-natured,‡ the mighty structure of his father's power began rapidly to decay. I do not know that Louis deserves so much contempt as he has undergone; but historians have in general more indulgence for splendid crimes, than for the weaknesses of virtue. There was no defect in Louis's understanding or courage; he was accomplished in martial exercises, and in all the learning which an education, excellent for that age, could supply. No one was ever more anxious to reform the abuses of administration; and whoever compares his capitularies with those of Charlemagne, will perceive that, as a legislator, he was even superior to his father. The fault lay entirely in his heart; and this fault was nothing but a temper too soft, and a conscience too strict.§ It is not wonderful that the empire should have been speedily dissolved: a succession of such men as Charles Martel, Pepin, and Charlemagne, could alone have preserved its integrity; but the misfortunes of Louis and his people were immediately owing to the following errors of his conduct.

[A. D. 817.] Soon after his accession, Louis thought fit to associate his eldest son Lothaire to the empire, and to confer the provinces of Bavaria and Aquitaine, as subordinate kingdoms, upon the two younger, Louis and Pepin. The step was, in appearance, conformable to his father's policy, who had acted towards himself in a similar manner. But such measures are not subject to general rules, and exact a careful regard to characters and circumstances. The principle, however, which regulated this division, was learned from Charlemagne,* and could alone, if strictly pursued, have given unity and permanence to the empire. The elder brother was to preserve his superiority over the others, so that they should neither make peace nor war, nor even give answer to ambassadors, without his consent. Upon the death of either, no further partition was to be made; but whichever of his children might become the popular choice, was to inherit the whole kingdom, under the same superiority of the head of the family.† This compact was, from the beginning, disliked by the younger brothers; and an event, upon which Louis does not seem to have calculated, soon disgusted his colleague Lothaire. Judith of Bavaria, the emperor's second wife, an ambitious woman, bore him a son, by name Charles, whom both parents were naturally anxious to place on an equal footing with his brothers. But this could only be done at the expense of Lothaire, who was ill-disposed to see his empire still further dismembered for this child of a second bed. Louis passed his life in a struggle with three undutiful sons, who abused his paternal kindness by constant rebellions.

His misfortunes and errors.

These were rendered more formidable by the concurrence of a different class of

* The life of Charlemagne, by Gaillard, without being made perhaps so interesting as it ought to have been, presents an adequate view both of his actions and character.—Schmidt, Hist. des Allemands, tome ii., appears to me a superior writer.

† A contemporary author, Thegan, ap. Muratori, A. D. 810, asserts that Bernard was born of a concubine. I do not know why modern historians represent it otherwise.

‡ These names, as a French writer observes, meant the same thing. *Pius* had, even in good Latin, the sense of *mitis* meek, forbearing, or what the French call *debonair*.—Synonymes de Rouband, tome i., p. 257. Our English word debonair is hardly used in the same sense, if indeed it can be called an English word; but I have not altered Louis's appellation, by which he is so well known.

§ Schmidt, Hist. des Allemands, tome ii., has done more justice than other historians to Louis's character. Vaissette attests the goodness of his government in Aquitaine, which he held as a subordinate kingdom during his father's life. It extended from the Loire to the Ebro, so that the trust was not contemptible.—Hist. de Languedoc, tome i., p. 476.

* Charlemagne had made a prospective arrangement in 806, the conditions of which are nearly the same as those of Louis; but the death of his two elder sons, Charles and Pepin, prevented its taking effect.—Baluz. Capitularia, p. 441.

† Baluzii Capitularia, tome i., p. 575.

enemies, whom it had been another error of the emperor to provoke. Charlemagne had assumed a thorough control and supremacy over the clergy; and his son was perhaps still more vigilant in chastising their irregularities, and reforming their rules of discipline. But to this, which they had been compelled to bear at the hands of the first, it was not equally easy for the second to obtain their submission. Louis, therefore, drew on himself the inveterate enmity of men, who united with the turbulence of martial nobles, a skill in managing those engines of offence which were peculiar to their order, and to which the implicit devotion of his character laid him very open. Yet, after many vicissitudes of fortune, and many days of ignominy, his wishes were eventually accomplished. [A. D. 840.]

Partition of the empire among his sons, Lothaire, Louis, and Charles the Bald.

Charles, his youngest son, surnamed the Bald, obtained, upon his death, most part of France, while Germany fell to the share of Louis, and the rest of the imperial dominions, with the title, to the eldest, Lothaire. [A. D. 847.] This partition was the result of a sanguinary, though short, contest; and it gave a fatal blow to the empire of the Franks. For the treaty of Mersen, in 847, abrogated the sovereignty that had been attached to the eldest brother and to the imperial name in former partitions; each held his respective kingdom as an independent right.*

Decline of the Carlovingian family. Charles the Fat, emperor 881. King of France 885. Deposed 887.

The subsequent partitions made among the children of these brothers are of too rapid succession to be here related. In about forty years, the empire was nearly reunited under Charles the Fat, son of Louis of Germany; but his short and inglorious reign ended in his deposition. From this time the possession of Italy was contested among her native princes; Germany fell at first to an illegitimate descendant of Charlemagne, and in a short time was entirely lost by his family; two kingdoms, afterward united,† were formed by usurpers, out of what was then called Burgundy, and comprised the provinces between the Rhone and the Alps, with Franche Comté, and great part of Switzerland. In France, the Carlovingian kings continued for another century; but their line was interrupted two or three times by the election or usurpation of a powerful family, the counts of Paris and Orleans, who ended, like the old mayors of the palace, in dispersing the phantoms of royalty they had professed to serve.* Hugh Capet, the representative of this house, upon the death of Louis V. placed himself upon the throne; thus founding the third and most permanent race of French sovereigns. Before this happened, the descendants of Charlemagne had sunk into insignificance, and retained little more of France than the city of Laon. The rest of the kingdom had been seized by the powerful nobles, who, with the nominal fidelity of the feudal system, maintained its practical independence and rebellious spirit.

Kings of France.
Eudes 887
Charles the Simple 898.
Robert † 922
Ralph 923.
Louis IV. 936. Lothaire 954. Louis V 986. Counts of Paris.

Dismemberment of the empire.

These were times of great misery to the people, and the worst, perhaps, that Europe has ever known. Even under Charlemagne, we have abundant proofs of the calamities which the people suffered. The light which shone around him was that of a consuming fire. The free proprietors, who had once considered themselves as only called upon to resist foreign invasion, were harassed with endless expeditions, and dragged away to the Baltic Sea or the banks of the Drave. Many of them, as we learn from his capitularies, became ecclesiastics to avoid military conscription.† But far worse

State of the people.

* Baluzii Capitularia, tome ii., p. 42. Velly, tome ii., p. 75. The expressions of this treaty are perhaps equivocal; but the subsequent conduct of the brothers and their family justifies the construction of Velly, which I have followed.

† These kingdoms were denominated Provence and Transjurane Burgundy. The latter was very small, comprising only part of Switzerland; but its second sovereign, Rodolph II., acquired by treaty almost the whole of the former; and the two united were called the kingdom of Arles. This lasted from 933 to 1032, when Rodolph III. bequeathed his dominions to the Emperor Conrad II.—Art de vérifier les Dates, tome ii., p. 427–432.

* The family of Capet is generally admitted to possess the most ancient pedigree of any sovereign line in Europe. Its succession through males is unequivocally deduced from Robert the Brave, made governor of Anjou in 834, and father of Eudes, king of France, and of Robert, who was chosen by a party in 922, though, as Charles the Simple was still acknowledged in some provinces, it is uncertain whether he ought to be counted in the royal list. It is, moreover, highly probable that Robert the Brave was descended, equally through males, from St. Arnoul, who died in 640, and consequently nearly allied to the Carlovingian family, who derive their pedigree from the same head.—See Preuves de la Généalogie de Hughes Capet, in l'Art de vérifier les Dates, torne i., p. 566.

† Capitularia, A. D. 805. Whoever possessed three mansi of allodial property, was called upon for personal service, or at least to furnish a substitute. Nigellus, author of a poetical Life of Louis

must have been their state under the lax government of succeeding times, when the dukes and counts, no longer checked by the vigorous administration of Charlemagne, were at liberty to play the tyrants in their several territories, of which they now became almost the sovereigns. The poorer landholders accordingly were forced to bow their necks to the yoke; and either by compulsion, or through hope of being better protected, submitted their independent patrimonies to the feudal tenure.

But evils still more terrible than these political abuses were the lot of those nations who had been subject to Charlemagne. They, indeed, may appear to us little better than ferocious barbarians: but they were exposed to the assaults of tribes, in comparison of whom they must be deemed humane and polished. Each frontier of the empire had to dread the attack of an enemy. The coasts of Italy were continually alarmed by the Saracens of Africa, who possessed themselves of Sicily and Sardinia, and became masters of the Mediterranean Sea.* [A. D. 846–849.] Though the Greek dominions in the south of Italy were chiefly exposed to them, they twice insulted and ravaged the territory of Rome; nor was there any security even in the neighbourhood of the maritime Alps, where, early in the tenth century, they settled a piratical colony.†

The Saracens.

Much more formidable were the foes by whom Germany was assailed. The Sclavonians, a widely-extended people, whose language is still spoken upon half the surface of Europe, had occupied the countries of Bohemia, Poland, and Pannonia,‡ on the eastern confines of the empire and from the time of Charlemagne acknowledged its superiority. But at the end of the ninth century, a Tartarian tribe, the Hungarians, overspreading that country which since has borne their name, and moving forward like a vast wave, brought a dreadful reverse upon Germany. Their numbers were great, their ferocity untamed. They fought with light cavalry and light armour, trusting to their showers of arrows, against which the swords and lances of the European armies could not avail. The memory of Attila was renewed in the devastations of these savages, who, if they were not his compatriots, resembled them both in their countenances and customs. [A. D. 934–954.] All Italy, all Germany, and the south of France, felt this scourge;* till Henry the Fowler and Otho the Great drove them back by successive victories within their own limits, where, in a short time, they learned peaceful arts, adopted the religion, and followed the policy, of Christendom.

The Hungarians.

If any enemies could be more destructive than these Hungarians, they were the pirates of the north, known commonly by the name of Normans. The love of a predatory life seems to have attracted adventurers of different nations to the Scandinavian seas, from whence they infested, not only by maritime piracy, but continual invasions, the northern coasts both of France and Germany. The causes of their sudden appearance are inexplicable, or at least could only be sought in the ancient traditions of Scandinavia. For, undoubtedly, the coasts of France and England were as little protected from depredations under the Merovingian kings and those of the Heptarchy, as in subsequent times. Yet only one instance of an attack from this side is recorded, and that before the middle of the sixth cen-

The Normans.

I., seems to implicate Charlemagne himself in some of the oppressions of his reign. It was the first care of the former to redress those who had been injured in his father's time.—Recueil des Historiens, tome vi. N. B. I quote by this title the great collection of French historians, charters, and other documents illustrative of the middle ages, more commonly known by the name of its first editor, the Benedictine Bouquet. But as several learned men of that order were successively concerned in this work, not one half of which has yet been published, it seemed better to follow its own title-page.

* These African Saracens belonged to the Aglabites, a dynasty that reigned at Tunis for the whole of the ninth century, after throwing off the yoke of the Abbassite Khalifs. They were overthrown themselves in the next age by the Fatimites. Sicily was first invaded in 827; but the city of Syracuse was only reduced in 878.

† Muratori, Annali d'Italia, ad ann. 906, et alibi. These Saracens of Frassineto, supposed to be between Nice and Monaco, were extirpated by a Count of Provence in 972.

‡ I am sensible of the awkward effect of introducing this name from a more ancient geography but it saves a circumlocution still more awkward Austria would convey an imperfect idea, and the Austrian dominions could not be named without a tremendous anachronism.

* In 924 they overran Languedoc. Raymond Pons, count of Toulouse, cut their army to pieces but they had previously committed such ravages, that the bishops of that province, writing soon afterward to Pope John X., assert that scarcely any eminent ecclesiastics, out of a great number, were left alive.—Hist. de Languedoc, tome ii., p. 60. They penetrated into Guienne as late as 951.—Flodoardi Chronicon, in Recueil des Historiens, tome viii. In Italy they inspired such terror, that a mass was composed expressly deprecating this calamity: Ab Ungarorum nos defendas jaculis! In 937 they ravaged the country as far as Benevento and Capua.—Muratori, Ann. d'Italia.

tury,* till the age of Charlemagne. In 787, the Danes, as we call those northern plunderers, began to infest England, which lay most immediately open to their incursions. Soon afterward they ravaged the coasts of France. Charlemagne repulsed them by means of his fleets; yet they pillaged a few places during his reign. It is said that, perceiving one day, from a port in the Mediterranean, some Norman vessels which had penetrated into that sea, he shed tears, in anticipation of the miseries which awaited his empire.† In Louis's reign their depredations upon the coasts were more incessant,‡ but they did not penetrate into the inland country till that of Charles the Bald. The wars between that prince and his family, which exhausted France of her noblest blood, the insubordination of the provincial governors, even the instigation of some of Charles's enemies, laid all open to their inroads. They adopted a uniform plan of warfare both in France and England; sailing up navigable rivers in their vessels of small burden, and fortifying the islands which they occasionally found, they made these intrenchments at once an asylum for their women and children, a repository for their plunder, and a place of retreat from superior force. After pillaging a town, they retired to these strongholds or to their ships; and it was not till 872 that they ventured to keep possession of Angers, which, however, they were compelled to evacuate. Sixteen years afterward they laid siege to Paris, and committed the most ruinous devastations on the neighbouring country. As these Normans were unchecked by religious awe, the rich monasteries, which had stood harmless amid the havoc of Christian war, were overwhelmed in the storm. Perhaps they may have endured some irrecoverable losses of ancient learning; but their complaints are of monuments disfigured, bones of saints and kings dispersed, treasures carried away. St. Denis redeemed its abbot from captivity with six hundred and eighty-five pounds of gold. All the chief abbeys were stripped about the same time, either by the enemy, or for contributions to the public necessity. So impoverished was the kingdom, that in 860 Charles the Bald had great difficulty in collecting three thousand pounds of silver, to subsidize a body of Normans against their countrymen. The kings of France, too feeble to prevent or repel these invaders, had recourse to the palliative of buying peace at their hands, or rather precarious armistices, to which reviving thirst of plunder soon put an end. At length Charles the Simple, in 918, ceded a great province which they had already partly occupied, partly rendered desolate, and which has derived from them the name of Normandy. Ignominious as this appears, it proved no impolitic step. Rollo, the Norman chief, with all his subjects, became Christians and Frenchmen; and the kingdom was at once relieved from a terrible enemy, and strengthened by a race of hardy colonists.*

The accession of Hugh Capet had not the immediate effect of restoring the royal authority over France. His own very extensive fief was now indeed united to the crown; but a few great vassals occupied the remainder of the kingdom. [A. D. 987.] Six of these obtained, at a subsequent time, the exclusive appellation of peers of France; the Count of Flanders, whose fief stretched from the Scheldt to the Somme; the Count of Champagne; the Duke of Normandy, to whom Britany did homage; the Duke of Burgundy, on whom the Count of Nivernois seems to have depended; the Duke of Aquitaine, whose territory, though less than the ancient kingdom of that name, comprehended Poitou, Limousin, and most of Guienne, with the feudal superiority over the Angoumois, and some other central districts; and, lastly, the Count of Toulouse, who possessed Languedoc, with the small countries of Quercy and Rouergue, and the superiority over Auvergne.† Besides

Accession of Hugh Capet.

State of France that time.

* Greg. Turon, l. iii., c. 3.

† In the ninth century the Norman pirates not only ravaged the Balearic isles, and nearer coasts of the Mediterranean, but even Greece.—De Marca, Marca Hispanica, p. 327.

‡ Nigellus, the poetical biographer of Louis, gives the following description of the Normans:—

Nort quoque Francisco dicuntur nomine *manni*.
Veloces, agiles, armigerique nimis;
Ipse quidem populus latè pernotus habetur,
Lintre dapes quærit, incolitatque mare.
Pulcher ad est facie, vultuque statuque decorus.—l. iv.

He goes on to tell us that they worshipped Neptune. Was it a similarity o name, or of attributes, that deceived him?

* An exceedingly good sketch of these Norman incursions, and of the political situation of France during that period, may be found in two Memoirs by M. Bonamy, Mém. de l'Acad. des Inscrip., tomes xv. and xvii. These I have chiefly followed in the text.

† Auvergne changed its feudal superior twice. It had been subject to the Duke of Aquitaine till about the middle of the tenth century. The counts of Toulouse then got possession of it; but early in the twelfth century the counts of Auvergne again

these six, the Duke of Gascony not long afterward united with Aquitaine, the counts of Anjou, Ponthieu, and Vermandois, the Viscount of Bourges, the lords of Bourbon and Coucy, with one or two other vassals, held immediately of the last Carlovingian kings.* This was the aristocracy of which Hugh Capet usurped the direction; for the suffrage of no general assembly gave a sanction to his title. On the death of Louis V. he took advantage of the absence of Charles, duke of Lorraine, who, as the deceased king's uncle, was nearest heir, and procured his own consecration at Rheims. At first he was by no means acknowledged in the kingdom; but his contest with Charles proving successful, the chief vassals ultimately gave at least a tacit consent to the usurpation, and permitted the royal name to descend undisputed upon his posterity.† But this was almost the sole attribute of sovereignty which the first kings of the third dynasty enjoyed. For a long period before and after the accession of that family, France has, properly speaking, no national history. The character or fortune of those who were called its kings, was little more important to the majority of the nation than that of foreign princes. Undoubtedly, the degree of influence which they exercised with respect to the vassals of the crown varied according to their power and their proximity. Over Guienne and Toulouse, the four first Capets had very little authority; nor do they seem to have ever received assistance from them either in civil or national wars.‡ With provinces nearer to their own domains, such as Normandy and Flanders, they were frequently engaged in alliance or hostility; but each seemed rather to proceed from the policy of independent states, than from the relation of a sovereign towards his subjects.

Robert 996.

Henry I. 1031.

Philip I. 1060.

It should be remembered that when the fiefs of Paris and Orleans are said to have been reunited by Hugh Capet to the crown, little more is understood than the feudal superiority over the vassals of these provinces. As the kingdom of Charlemagne's posterity was split into a number of great fiefs, so each of these contained many barons, possessing exclusive immunities within their own territories, waging war at their pleasure, administering justice to their military tenants and other subjects, and free from all control beyond the conditions of the feudal compact.* At the accession of Louis VI., in 1108, the cities of Paris, Orleans, and Bourges, with the immediately adjacent districts, formed the most considerable portion of the royal domain. A number of petty barons, with their fortified castles, intercepted the communication between these, and waged war against the king almost under the walls of his capital. It cost Louis a great deal of trouble to reduce the lords of Montlehery, and other places within a few miles of Paris Under this prince, however, who had more activity than his predecessors, the royal authority considerably revived. From his reign we may date the syste

Louis VI.

did homage to Guienne. It is very difficult to follow the history of these fiefs.

* The *immediacy* of vassals, in times so ancient, is open to much controversy. I have followed the authority of those industrious Benedictines, the editors of l'Art de vérifier les Dates.

† The south of France not only took no part in Hugh's elevation, but long refused to pay him any obedience, or rather to acknowledge his title, for obedience was wholly out of the question. The style of charters ran, instead of the king's name, *Deo regnante, rege expectante*, or *absente rege terreno*. He forced Guienne to submit about 990. But in Limousin they continued to acknowledge the sons of Charles of Lorraine till 1009.—Vaissette, Hist. de Lang., t. ii., p. 120, 150. Before this, Toulouse had refused to recognise Eudes and Raoul, two kings of France, who were not of the Carlovingian family, and even hesitated about Louis IV. and Lothaire, who had an hereditary right.—Idem.

These proofs of Hugh Capet's usurpation seem not to be materially invalidated by a dissertation in the 50th volume of the Academy of Inscriptions, p. 553. It is not, of course, to be denied, that the northern parts of France acquiesced in his assumption of the royal title, if they did not give an express consent to it.

‡ I have not found any authority for supposing that the provinces south of the Loire contributed their assistance to the king in war, unless the following passage of Gulielmus Pictaviensis be considered as matter of fact, and not rather as a rhetorical flourish. He tells us that a vast army was collected by Henry I. against the Duke of Normandy: Burgundiam, Arverniam, atque Vasconiam properare videres horribiles ferro; immo vires tanti regni quantum in climata quatuor mundi patent cunctas.—Recueil des Historiens, t. xi., p. 83. But we have the roll of the army which Louis VI. led against the Emperor Henry V., A. D. 1120, in a national war: and it was entirely composed of troops from Champagne, the Isle of France, the Orleannois, and other provinces north of the Loire —Velly, t. iii., p. 62. Yet this was a sort of convocation of the ban: Rex ut eum tota Francia sequatur, invitat. Even so late as the reign of Philip Augustus, in a list of the knights bannerets of France, though those of Britany, Flanders, Champagne, and Burgundy, besides the royal domains are enumerated, no mention is made of the provinces beyond the Loire.—Du Chesne, Script. Rerum Gallicarum, t. v., p. 262.

* In a subsequent chapter, I shall illustrate, at much greater length, the circumstances of the French monarchy with respect to its feudal vassals. It would be inconvenient to anticipate the subject at present, which is rather of a legal than narrative character

matic rivalry of the French and English monarchies. Hostilities had several times occurred between Philip I. and the two Williams; but the wars that began under Louis VI. lasted, with no long interruption, for three centuries and a half, and form, indeed, the most leading feature of French history during the middle ages.* Of all the royal vassals, the dukes of Normandy were the proudest and most powerful. Though they had submitted to do homage, they could not forget that they came in originally by force, and that in real strength they were fully equal to their sovereign. Nor had the conquest of England any tendency to diminish their pretensions.†

Louis VII. ascended the throne with better prospects than his father. [A. D. 1137.] He had married Eleanor, heiress of the great dutchy of Guienne. But this union, which promised an immense accession of strength to the crown, was rendered unhappy by the levities of that princess. Repudiated by Louis, who felt rather as a husband than a king, Eleanor immediately married Henry II. of England; who, already inheriting Normandy from his mother, and Anjou from his father, became possessed of more than one half of France, and an overmatch for Louis, even if the great vassals of the crown had been always ready to maintain its supremacy. One might venture perhaps to conjecture that the sceptre of France would eventually have passed from the Capets to the Plantagenets, if the vexatious quarrel with Becket at one time, and the successive rebellions fomented by Louis at a later period, had not embarrassed the great talents and ambitious spirit of Henry.

Louis VII.

[A. D. 1180.] But the scene quite changed when Philip Augustus, son of Louis VII., came upon the stage. No prince comparable to him in systematic ambition and military enterprise had reigned in France since Charlemagne. From his reign the French monarchy dates the recovery of its lustre. He wrested from the Count of Flanders the Vermandois (that part of Picardy which borders on the Isle of France and Champagne),* and subsequently, the county of Artois. But the most important conquests of Philip were obtained against the kings of England. Even Richard I., with all his prowess, lost ground in struggling against an adversary, not less active, and more politic than himself. [A. D. 1203.] But when John not only took possession of his brother's dominions, but confirmed his usurpation by the murder, as was very probably surmised, of the heir, Philip, artfully taking advantage of the general indignation, summoned him as his vassal to the court of his peers. John demanded a safe conduct. Willingly, said Philip; let him come unmolested. And return? inquired the English envoy. If the judgment of his peers permit him, replied the king. By all the saints of France, he exclaimed, when farther pressed, he shall not return unless acquitted. The Bishop of Ely still remonstrated, that the Duke of Normandy could not come without the King of England; nor would the barons of that country permit their sovereign to run the risk of death or imprisonment. What of that, my lord bishop? cried Philip. It is well known that my vassal, the Duke of Normandy, acquired England by force. But, if a subject obtains any accession of dignity, shall his paramount lord therefore lose his rights?†

Philip Augustus.

Conquest of Normandy

It may be doubted whether, in thus citing John before his court, the King of France did not stretch his feudal sovereignty beyond its acknowledged limits. Arthur was certainly no immediate vassal of the crown for Britany; and though he had done homage to Philip for Anjou and Maine, yet a subsequent treaty had abrogated his investiture, and confirmed his uncle in the possession of those provinces.‡ But the vigour of Philip, and the meanness of his adversary, cast a shade over all that might be novel or irregular in these proceedings. John, not appearing at his summons, was declared guilty of felony, and his fiefs confiscated. The execution of this sentence was not in-

* Velly, t. iii., p. 40.

† The Norman historians maintain that their dukes did not owe any service to the King of France, but only simple homage, or, as it was called, per paragium.—Recueil des Historiens, t. xi., pref., p. 161. They certainly acted upon this principle; and the manner in which they first came into the country is no very consistent with dependance.

* The original counts of Vermandois were descended from Bernard, king of Italy, grandson of Charlemagne: but their fief passed by the donation of Isabel, the last countess, to her husband, the Earl of Flanders, after her death in 1183. The principal towns of the Vermandois are St. Quentin and Peronne.—Art de vérifier les Dates, t. ii. p. 700.

† Mat. Paris, p. 238, edit. 1684.

‡ The illegality of Philip's proceedings is well argued by Mably, Observations sur l'Histoire de France. l. iii., c. 6.

trusted to a dilatory arm. Philip poured his troops into Normandy, and took town after town, while the King of England, infatuated by his own wickedness and cowardice, made hardly an attempt at defence. In two years Normandy, Maine, and Anjou were irrecoverably lost. [A. D. 1223.] Poitou and Guienne resisted longer: but the conquest of the first was completed by Louis VIII., successor of Philip, and the subjection of the second seemed drawing near, when the arms of Louis were diverted to different, but scarcely less advantageous objects.

Louis VIII.

The country of Languedoc, subject to the counts of Toulouse, had been unconnected, beyond any other part of France, with the kings of the house of Capet. Louis VII. having married his sister to the reigning count, and travelled himself through the country, began to exercise some degree of authority, chiefly in confirming the rights of ecclesiastical bodies, who were vain, perhaps, of this additional sanction to the privileges which they already possessed.* But the remoteness of their situation, with a difference in language and legal usages, still kept the people of this province apart from those of the north of France.

Affairs of Languedoc.

About the middle of the twelfth century, certain religious opinions, which it is not easy, nor, for our present purpose, material to define, but, upon every supposition, exceedingly adverse to those of the church,† began to spread over Languedoc. Those who imbibed them have borne the name of Albigeois, though they were in no degree peculiar to the district of Albi. In despite of much preaching and some persecution, these errors made a continual progress; till Innocent III., in 1198, despatched commissaries, the seed of the inquisition, with ample powers both to investigate and to chastise Raymond VI., count of Toulouse, whether inclined towards the innovators, as was then the theme of reproach, or, as is more probable, disgusted with the insolent interference of the pope and his missionaries, provoked them to pronounce a sentence of excommunication against him. [A. D. 1208.] Though this was taken off, he was still suspected; and upon the assassination of one of the inquisitors, in which Raymond had no concern, Innocent published a crusade both against the count and his subjects, calling upon the King of France, and the nobility of that kingdom, to take up the cross, with all the indulgences usually held out as allurements to religious warfare. Though Philip would not interfere, a prodigious number of knights undertook this enterprise, led partly by ecclesiastics, and partly by some of the first barons in France. It was prosecuted with every atrocious barbarity which superstition, the mother of crimes, could inspire. Languedoc, a country, for that age, flourishing and civilized, was laid waste by these desolaters; her cities burnt; her inhabitants swept away by fire and the sword. And this was to punish a fanaticism ten thousand times more innocent than their own, and errors which, according to the worst imputations, left the laws of humanity and the peace of social life unimpaired.*

The crusaders were commanded by Simon de Montfort, a man, like Cromwell, whose intrepidity, hypocrisy, and ambition, marked him for the hero of a holy war. The energy of such a mind, at the head of an army of enthusiastic warriors, may well account for successes which then appeared miraculous. But Montfort was cut off before he could realize his ultimate object, an independent principality; and Raymond was able to bequeath the inheritance of his ancestors to his son [A. D. 1222.] Rome, however, was not yet appeased; upon some new pretence, she raised up a still more formidable enemy against the younger Raymond. Louis VIII. suffer-

Crusade against the Albigeois.

* According to the Benedictine historians, Vich and Vaissette, there is no trace of any act of sovereignty exercised by the kings of France in Languedoc from 955, when Lothaire confirmed a charter of his predecessor Raoul, in favour of the Bishop of Puy, till the reign of Louis VII.—(Hist. de Languedoc, tome ii., p. 88.) They have published, however, an instrument of Louis VI. in favour of the same church, confirming those of former princes.—(Appendix, p. 473.) Neither the counts of Toulouse, nor any lord of the province, were present in a very numerous national assembly, at the coronation of Philip I.—(Id., p. 200.) I do not recollect to have ever met with the name of the Count of Toulouse as a subscribing witness to the charters of the first Capetian kings in the Recueil des Historiens, where many are published: though that of the Duke of Guienne sometimes occurs.

† For the real tenets of the Languedocian sectaries, I refer to the last chapter of the present work, where the subject will be taken up again.

* The Albigensian war commenced with the storming of Bezières, and a massacre, wherein 15,000 persons, or, according to some narrations 60,000, were put to the sword. Not a living soul escaped, as witnesses assure us. It was here that a Cistertian monk, who led on the crusaders, answered the inquiry, how the Catholics were to be distinguished from heretics. *Kill them all! God will know his own.* Besides Vaissette, see Sismondi, Littérature du Midi, t. i., p. 201.

ed himself to be diverted from the conquest of Guienne, to take the cross against the supposed patron of heresy. After a short and successful war, Louis, dying prematurely, left the crown of France to a son only twelve years old. But the Count of Toulouse was still pursued, till, hopeless of safety in so unequal a struggle, he concluded a treaty upon very hard terms. [A. D. 1229.] By this he ceded the greater part of Languedoc; and giving his daughter in marriage to Alphonso, brother of Louis IX., confirmed to them, and to the king n failure of their descendants, the reversion of the rest, in exclusion of any other children whom he might have. Thus fell the ancient house of Toulouse, through one of those strange combinations of fortune which thwart the natural course of human prosperity, and disappoint the plans of wise policy and beneficent government.*

Louis IX.

[A. D. 1226.] The rapid progress of royal power under Philip Augustus and his son had scarcely given the great vassals time to reflect upon the change which it produced in their situation. The crown, with which some might singly have measured their forces, was now an equipoise to their united weight. And such a union was hard to be accomplished among men not always very sagacious in policy, and divided by separate interests and animosities. They were not, however, insensible to the crisis of their feudal liberties; and the minority of Louis IX., guided only by his mother, the regent Blanche of Castile, seemed to offer a favourable opportunity for recovering their former situation. Some of the most considerable barons, the counts of Britany, Champagne, and la Marche, had, during the time of Louis VIII., shown an unwillingness to push the Count of Toulouse too far, if they did not even keep up a secret understanding with him. They now broke out into open rebellion; but the address of Blanche detached some from the league, and her firmness subdued the rest. For the first fifteen years of Louis's reign, the struggle was frequently renewed; till repeated humiliations convinced the refractory that the throne was no longer to be shaken. A prince so feeble as Henry III. was unable to afford them that aid from England, which, if his grandfather or son had then reigned, might probably have lengthened these civil wars.

His character. Its excellences

But Louis IX. had methods of preserving his ascendency very different from military prowess. That excellent prince was perhaps the most eminent pattern of unswerving probity and Christian strictness of conscience, that ever held the sceptre in any country. There is a peculiar beauty in the reign of St. Louis, because it shows the inestimable benefit which a virtuous king may confer on his people, without possessing any distinguished genius. For nearly half a century that he governed France, there is not the smallest want of moderation or disinterestedness in his actions; and yet he raised the influence of the monarchy to a much higher point than the most ambitious of his predecessors. [A. D. 1259.] To the surprise of his own and later times, he restored great part of his conquests to Henry III., whom he might naturally hope to have expelled from France. It would indeed have been a tedious work to conquer Guienne, which was full of strong places, and the subjugation of such a province might have alarmed the other vassals of his crown. But it is the privilege only of virtuous minds to perceive that wisdom resides in moderate counsels; no sagacity ever taught a selfish and ambitious sovereign to forego the sweetness of immediate power. An ordinary king, in the circumstances of the French monarchy, would have fomented, or, at least, have rejoiced in the dissensions which broke out among the principal vassals; Louis constantly employed himself to reconcile them. In this, too, his benevolence had all the effects of far-sighted policy. It had been the practice of his three last predecessors to interpose their mediation in behalf of the less powerful classes; the clergy, the inferior nobility, and the inhabitants of chartered towns. Thus the supremacy of the crown became a familiar idea; but the perfect integrity of St. Louis wore away all distrust, and accustomed even the most jealous feudatories to look upon him as their judge and legislator. And as the royal authority was hitherto shown only in its most amiable prerogatives, the dispensation of favour, and the redress of wrong, few were watchful enough to remark the transition of the French constitution from a feudal league to an absolute monarchy.

It was perhaps fortunate for the dis

* The best account of this crusade against the Albigeois is to be found in the third volume of Vaissette's History of Languedoc: the Benedictine spirit of mildness and veracity tolerably counterbalancing the prejudices of orthodoxy. Velly, Hist. de France, t. iii., has abridged this work.

play of St Louis's virtues, that the throne had already been strengthened by the less innocent exertions of Philip Augustus and Louis VIII. A century earlier, his mild and scrupulous character, unsustained by great actual power, might not have inspired sufficient awe. But the crown was now grown so formidable, and Louis was so eminent for his firmness and bravery, qualities, without which every other virtue would have been ineffectual, that no one thought it safe to run wantonly into rebellion, while his disinterested administration gave no one a pretext for it. Hence the latter part of his reign was altogether tranquil, and employed in watching over the public peace and the security of travellers; administering justice personally or by the best counsellors; and compiling that code of feudal customs, called the Establishments of St. Louis, which is the first monument of legislation after the accession of the house of Capet. Not satisfied with the justice of his own conduct, Louis aimed at that act of virtue which is rarely practised by private men, and had perhaps no example among kings, restitution. Commissaries were appointed to inquire what possessions had been unjustly annexed to the royal domain during the two last reigns. These were restored to the proprietors, or, where length of time had made it difficult to ascertain the claimant, their value was distributed among the poor.*

It has been hinted already that all this excellence of heart in Louis IX. was not attended with that strength of understanding which is necessary, we must allow, to complete the usefulness of a sovereign. During his minority, Blanche of Castile, his mother, had filled the office of regent with great courage and firmness. But, after he grew up to manhood, her influence seems to have passed the limit which gratitude and piety would have assigned to it; and, as her temper was not very meek or popular exposed the king to some degree of contempt. He submitted even to be restrained from the society of his wife Margaret, daughter of Raymond, count of Provence, a princess of great virtue and conjugal affection. Joinville relates a curious story, characteristic of Blanche's arbitrary conduct, and sufficiently derogatory to Louis.*

and defects.

But the principal weakness of this king, which almost effaced all the good effects of his virtues, was superstition. It would be idle to sneer at those habits of abstemiousness and mortification which were part of the religion of his age; and, at the worst, were only injurious to his own comfort. But he had other prejudices, which, though they may be forgiven, must never be defended. No one was ever more impressed than St. Louis with a belief in the duty of exterminating all enemies to his own faith. With these, he thought no layman ought to risk himself in the perilous ways of reasoning, but to make answer with his sword as stoutly as a strong arm and a fiery zeal could carry that argument.† Though, fortunately for his fame, the persecution against the Albigeois, which had been the disgrace of his father's short reign, was at an end before he reached manhood, he suffered a hypocritical monk to establish a tribunal at Paris for the suppression of heresy, where many innocent persons suffered death.

But no events in Louis's life were more memorable than his two crusades, which lead us to look back on the nature and circumstances of that most singular phenomenon in European history Though the crusades involved all the western nations of Europe, without belonging peculiarly to any one, yet as France was more distinguished than the rest in most of those enterprises, I shall introduce the subject as a sort of digression from the main course of French history.

The crusades.

Even before the violation of Palestine by the Saracen arms, it had been a prevailing custom among the Christians of Europe to visit those scenes rendered interesting by religion, partly through delight in the effects of local association, partly in obedience to the prejudices or com-

* Velly, tome v., p. 150. This historian has very properly dwelt for almost a volume on St. Louis's internal administration; it is one of the most valuable parts of his work. Joinville is a real witness, on whom, when we listen, it is impossible not to rely.—Collection des Mémoires relatifs à l'Histoire de France, tome ii., pp. 140–156.

* Collection des Mémoires, tome ii., p. 241.

† Aussi vous dis je, me dist le roy, que nul, si n'est grant clerc, et theologien parfait, ne doit disputer aux Juifs; mais doit l'omme lay, quant il oit mesdire de la foy chrétienne, defendre la chose, non pas seulement des paroles, mais à bonne espée tranchant, et en frapper les médisans et mescreans à travers le corps, tant qu'elle y pourra entrer.—Joinville, in Collection des Mémoires, tome i., p. 23. This passage, which shows a tolerable degree of bigotry, did not require to be strained farther still by Mosheim, vol. iii., p. 273 (edit. 1803). I may observe by the way, that this writer, who sees nothing in Louis IX. except his intolerance, ought not to have charged him with issuing an edict in favour of the inquisition, in 1229, when he had not assumed the government.

mands of superstition. These pilgrimages became more frequent in later times, in spite, perhaps in consequence, of the danger and hardships which attended them. For a while the Mahometan possessors of Jerusalem permitted or even encouraged a devotion which they found lucrative; but this was interrupted whenever the ferocious insolence with which they regarded all infidels got the better of their rapacity. During the eleventh century, when, from increasing superstition, and some particular fancies, the pilgrims were more numerous than ever, a change took place in the government of Palestine, which was overrun by the Turkish hordes from the north. These barbarians treated the visiters of Jerusalem with still greater contumely, mingling with their Mahometan bigotry a consciousness of strength and courage, and a scorn of the Christians, whom they knew only by the debased natives of Greece and Syria, or by these humble and defenceless palmers. When such insults became known throughout Europe, they excited a keen sensation of resentment among nations equally courageous and devout; which, though wanting as yet any definite means of satisfying itself, was ripe for whatever favourable conjuncture might arise.

Twenty years before the first crusade, Gregory VII. had projected the scheme of imbodying Europe in arms against Asia; a scheme worthy of his daring mind, and which, perhaps, was never forgotten by Urban II., who in every thing loved to imitate his great predecessor.* This design of Gregory was founded upon the supplication of the Greek Emperor Michael, which was renewed by Alexius Comnenus to Urban with increased importunity. The Turks had now taken Nice, and threatened, from the opposite shore, the very walls of Constantinople. Every one knows whose hand held a torch to that inflammable mass of enthusiasm that pervaded Europe; the hermit of Picardy, who, roused by witnessed wrongs and imagined visions, journeyed from land to land, the apostle of a holy war. The preaching of Peter was powerfully seconded by Urban. [A. D. 1095.] In the councils of Piacenza and of Clermont, the deliverance of Jerusalem was eloquently recommended and exultingly undertaken. It is the will of God! was the tumultuous cry that broke from the heart and lips of the assembly at Clermont; and these words afford at once the most obvious and most certain explanation of the leading principle of the crusades. Later writers, incapable of sympathizing with the blind fervour of zeal, or anxious to find a pretext for its effect somewhat more congenial to the spirit of our times, have sought political reasons for that which resulted only from predominant affections. No suggestion of these will, I believe, be found in contemporary historians. To rescue the Greek empire from its imminent peril, and thus to secure Christendom from enemies who professed towards it eternal hostility, might have been a legitimate and magnanimous ground of interference; but it operated scarcely, or not at all, upon those who took the cross. Indeed, it argues strange ignorance of the eleventh century to ascribe such refinements of later times even to the princes of that age. The Turks were no doubt repelled from the neighbourhood of Constantinople by the crusaders; but this was a collateral effect of their enterprise. Nor had they any disposition to serve the interest of the Greeks, whom they soon came to hate, and not entirely without provocation, with almost as much animosity as the Moslems themselves.

Every means was used to excite an epidemical phrensy; the remission of penance, the dispensation from those practices of self-denial which superstition imposed or suspended at pleasure, the absolution of all sins, and the assurance of eternal felicity. None doubted that such as perished in the war received immediately the reward of martyrdom.* False miracles and fanatical prophecies, which were never so frequent, wrought up the enthusiasm to a still higher pitch. And these devotional feelings, which are usually thwarted and balanced by other passions, fell in with every motive that could influence the men of that time; with curiosity, restlessness, the love of license, thirst for war, emulation, ambition. Of the princes who assumed the cross, some, probably, from the beginning speculated upon forming independent establishments in the East. In later periods, the tempo

* Gregory addressed, in 1074, a sort of encyclic letter to all who would defend the Christian faith, enforcing upon them the duty of taking up arms against the Saracens, who had almost come up to the walls of Constantinople. No mention of Palestine is made in this letter.—Labbé, Concilia, t. x., p. 44. St. Marc, Abrégé Chron. de l'Hist. de l'Italie, t iii., p 614.

* Nam qui pro Christi nomine decertantes, in acie fidelium et Christianâ militiâ dicuntur occumbere, non solum infamiæ, verum et peccaminum et delictorum omnimodam credimus abolitionem ero mereri.—Will. Tyr., l. x., c. 20.

ral benefits of undertaking a crusade undoubtedly blended themselves with less selfish considerations. Men resorted to Palestine as in modern times they have done to the colonies, in order to redeem their time or repair their fortune. Thus Gui de Lusignan, after flying from France for murder, was ultimately raised to the throne of Jerusalem. To the more vulgar class were held out inducements which, though absorbed in the overruling fanaticism of the first crusade, might be exceedingly efficacious when it began rather to flag. During the time that a crusader bore the cross, he was free from suit for his debts, and the interest of them was entirely abolished; he was exempted, in some instances at least, from taxes, and placed under the protection of the church, so that he could not be impleaded in any civil court, except on criminal charges, or disputes relating to land.*

None of the sovereigns of Europe took a part in the first crusade; but many of their chief vassals, great part of the inferior nobility, and a countless multitude of the common people. The priests left their parishes, and the monks their cells; and, though the peasantry were then in general bound to the soil, we find no check given to their emigration for this cause. Numbers of women and children swelled the crowd; it appeared a sort of sacrilege to repel any one from a work which was considered as the manifest design of Providence. But if it were lawful to interpret the will of Providence by events, few undertakings have been more branded by its disapprobation than the crusades. So many crimes and so much misery have seldom been accumulated in so short a space as in the three years of the first expedition. We should be warranted by contemporary writers in stating the loss of the Christians alone during this period at nearly a million; but, at the least computation, it must have exceeded half that number.† To engage in the crusade, and to perish in it, were almost synonymous. Few of those myriads who were mustered in the plains of Nice returned to gladden their friends in Europe with the story of their triumph at Jerusalem. Besieging alternately and besieged in Antioch, they drained to the lees the cup of misery: three hundred thousand sat down before that place; next year there remained but a sixth part to pursue the enterprise. But their losses were least in the field of battle: the intrinsic superiority of European prowess was constantly displayed; the angel of Asia, to apply the bold language of our poet, high and unmatchable, where her rival was not, became a fear; and the Christian lances bore all before them in their shock from Nice to Antioch, Edessa and Jerusalem. [A. D. 1099.] It was here, where their triumph was consummated, that it was stained with the most atrocious massacre; not limited to the hour of resistance, but renewed deliberately even after that famous penitential procession to the holy sepulchre, which might have calmed their ferocious dispositions, if, through the misguided enthusiasm of the enterprise, it had not been rather calculated to excite them.*

The conquests obtained at such a price by the first crusade were chiefly comprised in the maritime parts of Syria. Except the state of Edessa beyond the Euphrates,† which, in its best days, extended over great part of Mesopotamia, the Latin possessions never reached more than a few leagues from the sea. Within the barrier of Mount Libanus, their arms might be feared, but their power was never established; and the prophet was still invoked in the mosques of Aleppo and Damascus. The principality of Antioch to the north, the kingdom of Jerusalem, with its feudal dependances of Tripoli and Tiberias, to the south, were assigned, the one to Boemond, a brother of Robert Guiscard, count of Apulia, the other to Godfrey of Boulogne,‡ whose ex-

Latin conquests in Syria.

* Otho of Frisingen, c. 35, has inserted a bull f Eugenius III., in 1146, containing some of these privileges. Others are granted by Philip Augustus in 1214.—Ordonnances des Rois de France, tome i. See also Du Cange, voc. Crucis Privilegia.

† William of Tyre says, that at the review before Nice there were found 600,000 *of both sexes*, exclusive of 100,000 cavalry armed in mail.—L. ii., c. 23. But Fulk of Chartres reckons the same number, besides women, children, and priests. An immense slaughter had previously been made in Hungary of the rabble under Gaultier Sans-Avoir.

* The work of Mailly, entitled L'Esprit des Croisades, is deserving of considerable praise for its diligence and impartiality. It carries the history, however, no farther than the first expedition Gibbon's two chapters on the crusades, though not without inaccuracies, are a brilliant portion of his great work. The original writers are chiefly collected in two folio volumes, entitled Gesta Dei per Francos. Hanover, 1611.

† Edessa was a little Christian principality, surrounded by, and tributary to, the Turks. The inhabitants invited Baldwin, on his progress in the first crusade, and he made no great scruple of supplanting the reigning prince, who indeed is represented as a tyrant and usurper. Esprit des Croisades, t. iv., p. 62. De Guignes, Hist. des Huns t. ii., pp. 135–162.

‡ Godfrey never took the title of King of Jerusalem, not choosing, he said, to wear a crown o

extraordinary merit had justly raised him to a degree of influence with the chief crusaders, that has been sometimes confounded with a legitimate authority.* In the course of a few years, Tyre, Ascalon, and the other cities upon the seacoast, were subjected by the successors of Godfrey on the throne of Jerusalem. But as their enemies had been stunned, not killed, by the western storm, the Latins were constantly molested by the Mahometans of Egypt and Syria. They were exposed, as the outposts of Christendom, with no respite and few resources. [A. D. 1147.] A second crusade, in which the Emperor Conrad III. and Louis VII. of France were engaged, each with seventy thousand cavalry, made scarce any diversion; and that vast army wasted away in the passage of Natolia.†

Second crusade.

The decline of the Christian establishments in the East is ascribed by William of Tyre to the extreme viciousness of their manners, to the adoption of European arms by the orientals, and to the union of the Mahometan principalities under a single chief.‡ Without denying the operation of these causes, and especially the last, it is easy to perceive one more radical than all the three, the inadequacy of their means of self-defence. The kingdom of Jerusalem was guarded only, exclusive of European volunteers, by the feudal service of eight hundred and sixty-six knights, attended each by four archers on horseback, by a militia of five thousand and seventy-five burghers, and by a conscription, in great exigencies, of the remaining population.* William of Tyre mentions an army of one thousand three hundred horse and fifteen thousand foot as the greatest which had ever been collected, and predicts the utmost success from it if wisely conducted.† This was a little before the irruption of Saladin. In the last fatal battle Lusignan seems to have had somewhat a larger force.‡ Nothing can more strikingly evince the ascendency of Europe, than the resistance of these Frankish acquisitions in Syria during nearly two hundred years. Several of their victories over the Moslems were obtained against such disparity of numbers, that they may be compared with whatever is most illustrious in history or romance.§ These perhaps were less due to the descendants of the first crusaders, settled in the Holy Land,‖ than to those volunteers from Europe, whom martial ardour and religious zeal impelled to the service. It was the penance commonly imposed upon men of rank for the most heinous crimes, to serve a number of years under the banner of the cross. Thus a perpetual supply of warriors was poured in from Europe; and in

Decline of the Latin principalities in the East.

gold in that city where his Saviour had been crowned with thorns. Baldwin, Godfrey's brother, who succeeded him within two years, entitles himself, Rex Hierusalem, Latinorum primus.—Will. Tyr., l. ii., c. 12.

* The heroes of the crusade are just like those of romance. Godfrey is not only the wisest, but the strongest man in the army. Perhaps Tasso has lost some part of this *physical* superiority for the sake of contrasting him with the imaginary Rinaldo. He cleaves a Turk in twain from the shoulder to the haunch. A noble Arab, after the taking of Jerusalem, requests him to try his sword upon a camel, when Godfrey with ease cuts off the head. The Arab, suspecting there might be something peculiar in the blade, desires him to do the same with *his* sword; and the hero obliges him by demolishing a second camel.—Will Tyr., l. ix., c. 22.

† Vertot puts the destruction in the second crusade at two hundred thousand men.—Hist. de Malthe, p. 129: and from William of Tyre's language, there seems no reason to consider this an exaggeration.—L. xvi., c. 19.

‡ L. xxi., c. 7. John of Vitry also mentions the change of weapons by the Saracens in imitation of the Latins, using the lances and coat of mail instead of bows and arrows, c. 92. But, according to a more ancient writer, part of Soliman's (the Kilidge Arslan of de Guignes) army in the first crusade was in armour, loricis et galeis et clypeis aureis valde armati.—Albertus Aquensis, l. ii., c. 27. I may add to this a testimony of another kind not less decisive. In the Abbey of St. Denis, there were ten pictures in stained glass, representing sieges and battles in the first crusade. These were made by order of Suger, the minister of Louis VI., and consequently in the early part of the twelfth century. In many of them the Turks are painted in coats of mail, sometimes even in a plated cuiras. In others they are quite unarmed, and in flowing robes.—Montfaucon, Monumens de la Monarchie Française, t. i., pl. 50.

* Gibbon, c. 98, note 125. Jerusalem itself was very thinly inhabited. For all the heathens, says William of Tyre, had perished in the massacre when the city was taken; or, if any escaped, they were not allowed to return: no heathen being thought fit to dwell in the holy city. Baldwin invited some Arabian Christians to settle in it.

† L. xxii., c. 27.

‡ A primo introitu Latinorum in terram sanctam, says John de Vitry, nostri tot milites in uno prœlio congregare nequiverunt. Erant enim mille ducenti milites loricati; peditum autem cum armis, arcubus et balistis circiter viginti millia, infaustæ expeditioni interfuisse dicuntur.—Gesta Dei per Francos, p. 1118.

§ A brief summary of these victories is given by John of Vitry, c. 93.

‖ Many of these were of a mongrel extraction, descended from a Frank parent on one side, and Syrian on the other. These were called Poulains, Pullani; and were looked upon as a mean, degenerate race.—Du Cange; Gloss. v., Pullani; and Observations sur Joinville, in Collection des Mémoires relatifs à l'Histoire de France, t. ii., p. 198

this sense, the crusades may be said to have lasted without intermission during the whole period of the Latin settlements. Of these defenders, the most renowned were the military orders of the Knights of the Temple and of the Hospital of St. John;* instituted, the one in 1124, the other in 1118, for the sole purpose of protecting the Holy Land. The Teutonic order, established in 1190, when the kingdom of Jerusalem was falling, soon diverted its schemes of holy warfare to a very different quarter of the world. Large estates, as well in Palestine as throughout Europe, enriched the two former institutions; but the pride, rapaciousness, and misconduct of both, especially of the Templars, seem to have balanced the advantages derived from their valour.† [A. D. 1187.] At length, the famous Saladin, usurping the throne of a feeble dynasty which had reigned in Egypt, broke in upon the Christians of Jerusalem; the king and the kingdom fell into his hands; nothing remained but a few strong towns upon the seacoast.

Third crusade.

[A. D. 1189.] These misfortunes roused once more the princes of Europe, and the third crusade was undertaken by three of her sovereigns, the greatest in personal estimation as well as dignity; by the Emperor Frederick Barbarossa, Philip Augustus of France, and our own Richard Cœur de Lion. But this, like the preceding enterprise, failed of permanent effect; and those feats of romantic prowess, which made the name of Richard so famous both in Europe and Asia,‡ proved only the total inefficacy of all exertions in an attempt so impracticable. Palestine was never the scene of another crusade. [A. D. 1204.] One great armament was diverted to the siege of Constantinople; and another [A. D. 1218] wasted in fruitless attempts upon Egypt. The Emperor Frederick II. afterward procured the restoration of Jerusalem by the Saracens; but the Christian princes of Syria were unable to defend it, and their possessions were gradually reduced to the maritime towns. Acre, the last of these, was finally taken by storm in 1291; and its ruin closes the history of the Latin dominion in Syria, which Europe had already ceased to protect.

Crusades of St. Louis.

The two last crusades were undertaken by St. Louis. [A. D. 1248.] In the first he was attended by 2800 knights and 50,000 ordinary troops.* He landed at Damietta in Egypt, for that country was now deemed the key of the Holy Land, and easily made himself master of the city. But, advancing up the country, he found natural impediments, as well as enemies, in his way; the Turks assailed him with Greek fire, an instrument of warfare almost as surprising and terrible as gunpowder; he lost his brother, the Count of Artois, with many knights, at Massoura, near Cairo; and began too late a retreat towards Damietta. Such calamities now fell upon this devoted army, as have scarce ever been surpassed; hunger and want of every kind, aggravated by an unsparing pestilence. At length the king was made prisoner, and very few of the army escaped the Turkish cimeter in battle or in captivity. Four hundred thousand livres were paid as a ransom for Louis. He returned to France, and passed near twenty years in the exercise of those virtues which are his best title to canonization. But the fatal illusions of superstition were still always at his heart; nor did it fail to be painfully observed by his subjects, that he still kept the cross upon his garment. [A. D. 1270.] His last expedition was originally designed for Jerusalem. But he had received some intimation that the King of Tunis was desirous of embracing Christianity. That these intentions might be carried into effect, he sailed out of his way to the coast of Africa, and laid siege to that city. A fever here put an end to his life, sacrificed to that ruling passion which never would have forsaken him. But he had survived the spirit of the crusades the disastrous expedition to Egypt had cured his subjects, though not himself, of their folly;† his son, after making terms

* The St. John of Jerusalem was neither the Evangelist, nor yet the Baptist, but a certain Cypriot, surnamed the Charitable, who had been patriarch of Alexandria.

† See a curious instance of the misconduct and insolence of the Templars, in William of Tyre, l. xx., c. 32. The Templars possessed nine thousand manors, and the knights of St. John nineteen thousand, in Europe. The latter were almost as much reproached as the Templars for their pride and avarice.—L. xviii., c. 6.

‡ When a Turk's horse started at a bush, he would chide him, Joinville says, with, Cuides tu qu'y soit le roi Richard? Women kept their children quiet with the threat of bringing Richard to them.

* The Arabian writers give him 9500 knights and 130,000 common soldiers. But I greatly prefer the authority of Joinville, who has twice mentioned the number of knights in the text. On Gibbon's authority, I put the main body at 50,000; but if Joinville has stated this, I have missed the passage. Their vessels amounted to 1800.

† The refusal of Joinville to accompany the king

with Tunis, returned to France; the Christians were suffered to lose what they still retained in the Holy Land; and though many princes in subsequent ages talked loudly of renewing the war, the promise, if it were ever sincere, was never accomplished.

[A. D. 1270.] Louis IX. had increased the royal domain by the annexation of several counties and other less important fiefs; but, soon after the accession of Philip III. (surnamed the Bold), it received a far more considerable augmentation. Alfonso, the late king's brother, had been invested with the county of Poitou, ceded by Henry III., together with part of Auvergne and of Saintonge; and held also, as has been said before, the remains of the great fief of Toulouse, in right of his wife Jane, heiress of Raymond VII. [A. D. 1271.] Upon his death, and that of his countess, which happened about the same time, the king entered into possession of all these territories. This acquisition brought the sovereigns of France into contact with new neighbours, the kings of Aragon and the powers of Italy. [A. D. 1285.] The first great and lasting foreign war which they carried on was that of Philip III. and Philip IV. against the former kingdom, excited by the insurrection of Sicily. Though effecting no change in the boundaries of their dominions, this war may be deemed a sort of epoch in the history of France and Spain, as well as in that of Italy, to which it more peculiarly belongs.

Philip III.

There still remained five great and ancient fiefs of the French crown; Champagne, Guienne, Flanders, Burgundy, and Britany. [A. D. 1285.] But Philip IV., usually called the Fair, married the heiress of the first, a little before his father's death; and, although he governed that county in her name, without pretending to reunite it to the royal domain, it was at least in a political sense, no longer a part of the feudal body. With some of his other vassals Philip used more violent methods. A parallel might be drawn between this prince and Philip Augustus. But while in ambition, violence of temper, and unprincipled rapacity as well as in the success of their attempts to establish an absolute authority, they may be considered as nearly equal, we may remark this difference, that Philip the Fair, who was destitute of military talents gained those ends by dissimulation which his predecessor had reached by force.

Philip the Fair.

Aggrandizement of the French monarchy under his reign.

The dutchy of Guienne, though somewhat abridged of its original extent, was still by far the most considerable of the French fiefs; even independently of its connexion with England.* Philip, by dint of perfidy, and by the egregious incapacity of Edmund, brother of Edward I., contrived to obtain, and to keep for several years, the possession of this great province. [A. D. 1292.] A quarrel among some French and English sailors having provoked retaliation, till a sort of piratical war commenced between the two countries, Edward, as Duke of Guienne, was summoned into the king's court to answer for the trespasses of his subjects. Upon this he despatched his brother to settle terms of reconciliation, with fuller powers than should have been intrusted to so credulous a negotiator. Philip so outwitted this prince, through a fictitious treaty, as to procure from him the surrender of all the fortresses in Guienne. He then threw off the mask, and after again

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in this second crusade is very memorable, and gives us an insight into the bad effects of both expeditions. Le Roy de France et le Roy de Navarre me pressoient fort de me croiser, et entreprendre le chemin du pelerinage de la croix. Mais je leur respondi, que tandis que j'avoie esté oultre-mer au service de Dieu, que les gens et officers du Roy de France, avoient trop grevé et foullé mes subjets, tant qu'ils en estoient apovris; tellement que jamés il ne seroit, que eulx et moy ne nous en sortissons. Et veoie clerement, si je me mectoie au pelerinage de la croix, que ce seroit la totale destruction de mesdiz povres subjets. Depuis ouy-je dire à plusieurs, que ceux qui luy conseillerent l'enterprinse de la croix, firent un trez grant mal, et pecherent mortellement. Car tandis qu'il fust au royaume de France, tout son royaume vivoit en paix, et regnoit justice. Et incontinent qu'il en fust ors, tout commença à décliner, et à empirer.—T. ii., . 158.

In the Fabliaux of Le Grand d'Aussy, we have a neat poem by Rutubœuf, a writer of St. Louis's age, in a dialogue between a crusader and a non-crusader, wherein, though he gives the last word to the former, it is plain that he designed the opposite scale to preponderate.—T. ii., p. 163.

* Philip was highly offended that instruments made in Guienne should be dated by the year of Edward's reign, and not of his own. This almost sole badge of sovereignty had been preserved by the kings of France during all the feudal ages. A struggle took place about it, which is recorded in a curious letter from John de Greilli to Edward. The French court at last consented to let dates be thus expressed:—Actum fuit, regnante P. rege Franciæ, E. rege Angliæ tenente ducatum Aquitaniæ. Several precedents were shown by the English, where the counts of Toulouse had used the form, Regnante A. comite Tolosæ.—Rymer, t. ii., p. 1083. As this is the first time that I quote Rymer, it may be proper to observe that my references are to the London edition, the paging of which is preserved on the margin of that printed at the Hague.

summoning Edward to appear, pronounced the confiscation of his fief.* This business is the greatest blemish in the political character of Edward. But his eagerness about the acquisition of Scotland rendered him less sensible to the danger of a possession in many respects more valuable; and the spirit of resistance among the English nobility, which his arbitrary measures had provoked, broke out very opportunely for Philip [A. D. 1303], to thwart every effort for the recovery of Guienne by arms. But after repeated suspensions of hostilities, a treaty was finally concluded, by which Philip restored the province, on the agreement of a marriage between his daughter Isabel and the heir of England.

To this restitution he was chiefly induced by the ill success that attended his arms in Flanders, another of the great fiefs which this ambitious monarch had endeavoured to confiscate. We have not perhaps as clear evidence of the original injustice of his proceedings towards the Count of Flanders as in the case of Guienne; but he certainly twice detained his person, once after drawing him on some pretext to his court, and again, in violation of the faith pledged by his generals. The Flemings made, however, so vigorous a resistance, that Philip was unable to reduce that small country [A. D. 1302]; and in one famous battle at Courtray, they discomfited a powerful army with that utter loss and ignominy to which the undisciplined impetuosity of the French nobles was pre-eminently exposed.†

Two other acquisitions of Philip the Fair deserve notice; that of the counties of Angouleme and la Marche, upon a sentence of forfeiture (and, as it seems, a very harsh one) passed against the reigning count; and that of the city of Lyons and its adjacent territory, which had not even feudally been subject to the crown of France for more than three hundred years. Lyons was the dowry of Matilda, daughter of Louis IV., on her marriage with Conrad, king of Burgundy, and was bequeathed with the rest of that kingdom by Rodolph, in 1032, to the empire. Frederick Barbarossa conferred upon the archbishop of Lyons all regalian rights over the city, with the title of Imperial Vicar. France seems to have had no concern with it, till St. Louis was called in as a mediator in disputes between the chapter and the city, during a vacancy of the see, and took the exercise of jurisdiction upon himself for the time. Philip III. having been chosen arbitrator in similar circumstances, insisted, before he would restore the jurisdiction, upon an oath of fealty from the new archbishop. This oath, which could be demanded, it seems, by no right but that of force, continued to be taken, till, in 1310, an archbishop resisting what he had thought a usurpation, the city was besieged by Philip IV., and the inhabitants not being unwilling to submit was finally united to the French crown.

Philip the Fair left three sons, who successively reigned in France; Louis X. Louis, surnamed Hutin, Philip the Long, and Charles the Fair; with a daughter, Isabel, married to Edward II of England. Louis, the eldest, survived his father little more than a year, leaving one daughter, and his queen pregnant. The circumstances that ensued require to be accurately stated. Louis had possessed, in right of his mother, the kingdom of Navarre, with the counties of Champagne and Brie. Upon his death, Philip, his next brother, assumed the regency both of France and Navarre; and, not long afterward, entered into a treaty with Eudes, duke of Burgundy, uncle of the princess Jane, Louis's daughter, by which her eventful rights to the succession were to be regulated. It was agreed that, in case the queen should be delivered of a daughter, these two princesses, or the surviver of them, should take the grandmother's inheritance, Navarre and Champagne, on releasing all claim to the throne of France. But this was not to take place till their age of consent, when, if they should refuse to make such renunciation, their claim was to remain, and *right to be done to them therein*; but, in return, the release made by Philip of Navarre and Champagne was to be null. In the meantime he was to *hold the government* of France, Navarre, and Champagne, receiving homage of vassals in all these countries as *governor*; saving the right of a male heir to the late king, in the event of whose birth the treaty was not to take effect.†

1314.

Question concerning the Salique-law. Philip V 1315.

* In the view I have taken of this transaction, I have been guided by several instruments in Rymer, which leave no doubt on my mind. Velly, of course, represents the matter more favourably for Philip.

† The Flemings took at Courtray 4000 pair of gilt spurs, which were only worn by knights. These Velly, happily enough, compares to Hannibal's three bushels of gold rings at Cannæ.

* Velly, t. vii., p. 404. For a more precise account of the political dependance of Lyons and its district, see l'Art de vérifier les Dates, t. ii., p. 469.

† Hist. de Charles le Mauvais, par Secousse, vol ii., p. 2.

This convention was made on the 17th of July, 1316; and on the 15th of November the queen brought into the world a son, John I. (as some called him), who died in four days. The conditional treaty was now become absolute; in spirit, at least, if any cavil might be raised about the expression; and Philip was, by his own agreement, precluded from taking any other title than that of regent or governor, until the princess Jane should attain the age to concur in or disclaim the provisional contract of her uncle. Instead of this, however, he procured himself to be consecrated at Rheims; though, on account of the avowed opposition of the Duke of Burgundy, and even of his own brother Charles, it was thought prudent to shut the gates during the ceremony, and to dispose guards throughout the town. Upon his return to Paris, an assembly, composed of prelates, barons, and burgesses of that city, was convened, who acknowledged him as their lawful sovereign, and, if we may believe an historian, expressly declared, that a woman was incapable of succeeding to the crown of France.* The Duke of Burgundy, however, made a show of supporting his niece's interests, till, tempted by the prospect of a marriage with the daughter of Philip, he shamefully betrayed her cause, and gave up in her name, for an inconsiderable pension, not only her disputed claim to the whole monarchy, but her unquestionable right to Navarre and Champagne.† I have been rather minute in stating these details, because the transaction is misrepresented by every historian, not excepting those who have written since the publication of the documents which illustrate it.‡

Jan. 6, 1317.

In this contest, every way memorable, but especially on account of that which sprung out of it, the exclusion of females from the throne of France was first publicly discussed. The French writers almost unanimously concur in asserting, that such an exclusion was built upon a fundamental maxim of their government. No written law, nor even, so far as I know, the direct testimony of any ancient writer, has been brought forward to confirm this position. For as to the text of the Salique-law, which was frequently quoted, and has indeed given a name to this exclusion of females, it can only by a doubtful and refined analogy be considered as bearing any relation to the succession of the crown. It is certain, nevertheless, that, from the time of Clovis, no woman had ever reigned in France; and although not an instance of a sole heiress had occurred before, yet some of the Merovingian kings left daughters, who might, if not rendered incapable by their sex, have shared with their brothers in partitions then commonly made.* But, on the other hand these times were gone quite out of memory, and France had much in the analogy of her existing usages to reconcile her to a female reign. The crown resembled a great fief; and the great fiefs were universally capable of descending to women. Even at the consecration of Philip himself, Maud, countess of Artois held the crown over his head among the other peers.† And it was scarcely beyond the recollection of persons living that Blanche had been legitimate regent of France during the minority of St Louis.

For these reasons, and much more from the provisional treaty concluded between Philip and the Duke of Burgundy, it may be fairly inferred, that the Salique-law, as it was called, was not so fixed a principle at that time as has been contended. But, however this may be, it received at the accession of Philip the Long a sanction which subsequent events more thoroughly confirmed. Philip himself leaving only

* Tunc etiam declaratum fuit, quod in regno Franciæ mulier non succedit.—Contin. Gul. Nangis, in Spicilegio d'Achery, tome iii. This monk, without talents, and probably without private information, is the sole contemporary historian of this important period. He describes the assembly which confirmed Philip's possession of the crown; quamplures proceres et regni nobiles ac magnates una cum plerisque prælatis et burgensibus Parisiensis civitatis.

† His. de Charles le Mauvais, t. ii., p. 6. Jane and her husband, the Count of Evreux, recovered Navarre after the death of Charles the Fair.

‡ Velly, who gives several proofs of disingenuousness in this part of history, mutilates the treaty of the 17th of July, 1316, in order to conceal Philip the Long's breach of faith towards his niece.

* The treaty of Andely, in 587, will be found to afford a very strong presumption that females were at that time excluded from reigning in France. —Greg. Turon., l. ix.

† The continuator of Nangis says indeed of this: de quo aliqui indignati fuerunt. But these were probably the partisans of her nephew Robert, who had been excluded by a judicial sentence of Philip IV., on the ground that the right of representation did not take place in Artois; a decision considered by many as unjust. Robert subsequently renewed his appeal to the court of Philip of Valois: but, unhappily for himself, yielded to the temptation of forging documents in support of a claim which seems to have been at least plausible without such aid. This unwise dishonesty, which is not without parallel in more private causes, not only ruined his pretensions to the county of Artois, but produced a sentence of forfeiture, and even of capital punishment, against himself.—See a pretty good account of Robert's process in Velly t. viii., p. 262

three daughters, his brother Charles mounted the throne [A. D. 1322]; and upon his death, the rule was so unquestionably established, that no only daughter was excluded by the Philip of Valois. Count of Valois, grandson of Philip the Bold. [A. D. 1328.] This prince first took the regency, the queen dowager being pregnant, and, upon her giving birth to a daughter, was crowned king. No competitor or opponent appeared in France; but one more formidable than any whom France could have produced, was awaiting the occasion to prosecute his imagined right with all the resources of valour and genius, and to carry desolation over that great kingdom with as little scruple as if he was preferring a suit before a civil tribunal.

From the moment of Charles IV.'s death, Edward III. of England buoyed himself up with the notion of his title to the crown of France, in right of his mother, Isabel, sister to the three last kings. We can have no hesitation in condemning the injustice of this pretension. Whether the Salique-law were or were not valid, no advantage could be gained by Edward. Even if we could forget the express or virtual decision of all France, there stood in his way Jane, the daughter of Louis X. three of Philip the Long, and one of Charles the Fair. Aware of this, Edward set up a distinction, that, although females were excluded from succession, the same rule did not apply to their male issue; and thus, though his mother Isabel could not herself become Queen of France, she might transmit a title to him. But this was contrary to the commonest rules of inheritance: and if it could have been regarded at all, Jane had a son, afterward the famous King of Navarre, who stood one degree nearer to the crown than Edward.

Claim of Edward III.

It is asserted in some French authorities, that Edward preferred a claim to the regency immediately after the decease of Charles the Fair, and that the States General, or at least the peers of France, adjudged that dignity to Philip de Valois. Whether this be true or not, it is clear that he entertained projects of recovering his right as early, though his youth and the embarrassed circumstances of his government threw insuperable obstacles in the way of their execution.* He did liege homage therefore to Philip for Guienne, and for several years, while the affairs of Scotland engrossed his attention, gave no sign of meditating a more magnificent enterprise. As he advanced in manhood, and felt the consciousness of his strength, his early designs grew mature, and produced a series of the most important and interesting revolutions in the fortunes of France. These will form the subject of the ensuing pages

* Letters of Edward III., addressed to certain nobles and towns in the south of France, dated March 28, 1328, four days before the birth of Charles IV.'s posthumous daughter intimate this resolution.—Rymer, vol. iv., p. 344, et seq. But an instrument, dated at Northampton, on the 16th of May, is decisive: This is a procuration to the bishops of Worcester and Litchfield, to demand and take possession of the kingdom of France, "in our name, which kingdom has devolved and appertains to us as to the right heir."—P. 354. To this mission Archbishop Stratford refers, in his vindication of himself from Edward's accusation of treason in 1340; and informs us that the two bishops actually proceeded to France, though without mentioning any further particulars. Novit enim qui nihil ignorat, quod cum quæstio de regno Franciæ post mortem regis Caroli, fratris serenissimæ matris vestræ, in parliamento tunc apud Northampton celebrato, tractata discussaque fuisset; quodque idem regnum Franciæ ad vos hæreditario jure extiterat legitimè devolutum; et super hoc fuit ordinatum, quod duo episcopi, Wigorniensis tunc, nunc autem Wintoniensis, ac Coventriensis et Lichfeldensis in Franciam dirigerent gressus suos, nomineque vestro regnum Franciæ vindicarent et prædicti Philippi de Valesio coronationem pro viribus impedirent; qui juxta ordinationem prædictam legationem iis injunctam tunc assumentes, gressus suos versus Franciam direxerunt; quæ quidem legatio maximam guerræ præsentis materiam ministravit.—Wilkins.—Concilia, t. i., p. 664.

There is no evidence in Rymer's Fœdera to corroborate Edward's supposed claim to the regency of France upon the death of Charles IV.; and it is certainly suspicious, that no appointment of ambassadors or procurators for this purpose should appear in so complete a collection of documents. The French historians generally assert this, upon the authority of the continuator of William of Nangis, a nearly contemporary, but not always well informed writer. It is curious to compare the four chief English historians. Rapin affirms both the claim to the regency, on Charles IV.'s death, and that to the kingdom, after the birth of his daughter. Carte, the most exact historian we have, mentions the latter, and is silent as to the former. Hume passes over both, and intimates that Edward did not take any steps in support of his pretensions in 1328. Henry gives the supposed trial of Edward's claim to the regency before the States General at great length, and makes no allusion to the other, so indisputably authenticated in Rymer It is, I think, most probable, that the two bishops never made the formal demand of the throne as they were directed by their instructions. Stratford's expressions seem to imply that they did not

PART II.

War of Edward III. in France.—Causes of his Success.—Civil Disturbances of France.—Peace of Bretigni—its Interpretation considered.—

Charles V.—Renewal of the War.—Charles VI. —his Minority and Insanity.—Civil Dissensions of the Parties of Orleans and Burgundy.—Assassination of both these Princes.—Intrigues of their Parties with England under Henry IV.—Henry V. invades France.—Treaty of Troyes.—State of France in the last Years of Charles VII. —Progress and subsequent Decline of the English Arms—their Expulsion from France.—Change in the Political Constitution.—Louis XI. —his Character.—Leagues formed against him. —Charles, Duke of Burgundy—his Prosperity and Fall.—Louis obtains Possession of Burgundy—his Death.—Charles VIII.—Acquisition of Britany.

War of Edward III. in France.

No war had broken out in Europe, since the fall of the Roman Empire, so memorable as that of Edward III. and his successors against France, whether we consider its duration, its object, or the magnitude and variety of its events. It was a struggle of one hundred and twenty years, interrupted but once by a regular pacification, where the most ancient and extensive dominion in the civilized world was the prize, twice lost and twice recovered in the conflict, while individual courage was wrought up to that high pitch which it can seldom display since the regularity of modern tactics has chastised its enthusiasm, and levelled its distinctions. There can be no occasion to dwell upon the events of this war, which are familiar to almost every reader; it is rather my aim to develop and arrange those circumstances which, when rightly understood, give the clew to its various changes of fortune.

Causes of his success.

France was, even in the fourteenth century, a kingdom of such extent and compactness of figure, such population and resources, and filled with so spirited a nobility, that the very idea of subjugating it by a foreign force must have seemed the most extravagant dream of ambition.* Yet, in the course of about twenty years of war, this mighty nation was reduced to the lowest state of exhaustion, and dismembered of considerable provinces by an ignominious peace. What was the combination of political causes which brought about so strange a revolution, and, though not realizing Edward's hopes to their extent, redeemed them from the imputation of rashness in the judgment of his own and succeeding ages?

Character of Edward III. and his son

The first advantage which Edward III. possessed in this contest, was derived from the splendour of his personal character, and from the still more eminent virtues of his son. Besides prudence and military skill, these great princes were endowed with qualities peculiarly fitted for the times in which they lived. Chivalry was then in its zenith; and in all the virtues which adorned the knightly character, in courtesy, munificence, gallantry in all delicate and magnanimous feelings none were so conspicuous as Edward III. and the Black Prince. As later princes have boasted of being the best gentlemen, they might claim to be the prowest knights in Europe; a character not quite dissimilar, yet of more high pretension. Their court was, as it were, the sun of that system which embraced the valour and nobility of the Christian world; and the respect which was felt for their excellences, while it drew many to their side, mitigated in all the rancour and ferociousness of hostility. This war was like a great tournament, where the combatants fought indeed *à outrance*, but with all the courtesy and fair play of such an entertainment, and almost as much for the honour of their ladies. In the school of the Edwards were formed men not inferior in any nobleness of disposition to their masters; Manni, and the Captal de Buch, Felton, Knollys, and Calverley, Chandos, and Lancaster. On the French side, especially after Du Guesclin came on the stage, these had rivals almost equally deserving of renown. If we could forget, what never should be forgotten, the wretchedness and devastation that fell upon a great kingdom, too dear a price for the display of any heroism, we might count these English wars in France among the brightest periods in history.

Character of Philip VI and John

Philip of Valois and John his son showed but poorly in comparison with their illustrious enemies. Yet they had both considerable virtues; they were brave,* just, liberal

* The pope (Benedict XII.) wrote a strong letter to Edward (March, 1340), dissuading him from taking the title and arms of France, and pointing out the impossibility of his ever succeeding. I have no doubt but that this was the common opinion. But the Avignon popes were very subservient to France. Clement VI., as well as his predecessor, Benedict XII., threatened Edward with spiritual arms.—Rymer, t. v., p. 88 and 465. It required Edward's spirit and steadiness to despise these menaces. But the time when they were terrible to princes was rather passed by; and the Holy See never ventured to provoke the king, who treated the church, throughout his reign, with admirable firmness and temper.

* The bravery of Philip is not questioned. But a French historian, in order, I suppose, to enhance this quality, has presumed to violate truth in an extraordinary manner. The challenge sent by Edward, offering to decide his claim to the kingdom by single combat, is well known. Certainly it conveys no imputation on the King of France to have declined this unfair proposal. But Velly has ep

and the latter, in particular, of unshaken fidelity to his word. But neither was beloved by his subjects; the misgovernment and extortion of their predecessors during half a century had alienated the public mind, and rendered their own taxes and debasement of the coin intolerable. Philip was made by misfortune, John by nature, suspicious and austere; and although their most violent acts seem never to have wanted absolute justice, yet they were so ill conducted, and of so arbitrary a complexion, that they greatly impaired the reputation, as well as interests, of these monarchs. In the execution of Clisson under Philip, in that of the Connétable d'Eu under John, and still more in that of Harcourt, even in the imprisonment of the King of Navarre, though every one of these might have been guilty of treasons, there were circumstances enough to exasperate the disaffected, and to strengthen the party of so politic a competitor as Edward.

Next to the personal qualities of the King of England, his resources in this war must be taken into the account. It was after long hesitation that he assumed the title and arms of France, from which, unless upon the best terms, he could not recede without loss of honour.*

Resources of the King of England.

In the meantime he strengthened himself by alliances with the emperor, with the cities of Flanders, and with most of the princes in the Netherlands and on the Rhine. Yet I do not know that he profited much by these conventions, since he met with no success till the scene of the war was changed from the Flemish frontier to Normandy and Poitou. The troops of Hainault alone were constantly distinguished in his service.

But his intrinsic strength was at home. England had been growing in riches since the wise government of his grandfather, Edward I., and through the market opened for her wool with the manufacturing towns of Flanders. She was tranquil within; and her northern enemy, the Scotch, had been defeated and quelled. The parliament, after some slight precautions against a very probable effect of Edward's conquest of France, the reduction of their own island into a province, entered, as warmly as improvidently, into his quarrel. The people made it their own, and grew so intoxicated with the victories of this war, that for some centuries the injustice and folly of the enterprise do not seem to have struck the gravest of our countrymen.

There is, indeed, ample room for national exultation at the names of Crecy, Poitiers, and Azincourt. So great was the disparity of numbers upon those famous days, that we cannot, with the French historians, attribute the discomfiture of their hosts merely to mistaken tactics and too impetuous valour. They yielded rather to that intrepid steadiness in danger, which had already become the characteristic of our English soldiers, and which, during four centuries, has ensured their superiority, whenever ignorance or infatuation has not led them into the field. But these victories, and the qualities that secured them, must chiefly be ascribed to the freedom of our constitution, and to the superior condition of the people. Not the nobility of England, not the feudal tenants, won the battles of Crecy and Poitiers; for these were fully matched in the ranks of France; but the yeomen, who drew the bow with strong and steady arms, accustomed to its use in their native fields, and rendered fearless by personal competence and civil freedom. It is well known that each of the three great victories was due to our archers, who were chiefly of the middle class, and attached, according to the sys-

Excellence of the English armies.

resented him as accepting it, on condition that Edward would stake the crown of England against that of France; an interpolation which may be truly called audacious, since not a word of this is in Philip's letter, preserved in Rymer, which the historian had before his eyes, and actually quotes upon the occasion.—Hist. de France, t. viii., p. 382.

* The first instrument in which Edward disallows the title of Philip, is his convention with the Emperor Louis of Bavaria, wherein he calls him nunc pro rege Francorum se gerentem. The date of this is August 26, 1337, yet on the 28th of the same month, another instrument gives him the title of king; and the same occurs in subsequent instances. At length we have an instrument of procuration to the Duke of Brabant, October 7, 1337, empowering him to take possession of the crown of France in the name of Edward: attendentes inclitum regnum Franciæ ad nos fore jure successionis legitimè devolutum. Another of the same date appoints the said duke his vicar-general and lieutenant of France. The king assumed in this commission the title Rex Franciæ et Angliæ; in other instruments he calls himself Rex Angliæ et Franciæ. It was necessary to obviate the jealousy of the English, who did not, in that age, admit the precedence of France. Accordingly, Edward had two great seals, on which the two kingdoms were named in a different order. But, in the royal arms, those of France were always in the first quarter, as they continued to be until the accession of the house of Brunswick.

Probably Edward III. would not have entered into the war merely on account of his claim to the crown. He had disputes with Philip about Guienne; and that prince had, rather unjustifiably, abetted Robert Bruce in Scotland. I am not inclined to lay any material stress upon the instigation of Robert of Artois.

tem of that age, to the knights and squires who fought in heavy armour with the lance. Even at the battle of Poitiers, of which our country seems to have the least right to boast, since the greater part of the Black Prince's small army was composed of Gascons, the merit of the English bowmen is strongly attested by Froissart.*

Condition of France after the battle of Poitiers.

Yet the glorious termination to which Edward was enabled, at least for a time, to bring the contest, was rather the work of fortune than of valour and prudence. Until the battle of Poitiers, he had made no progress towards the conquest of France. That country was too vast, and his army too small, for such a revolution. The victory of Crecy gave him nothing but Calais; a post of considerable importance in war and peace, but rather adapted to annoy than to subjugate the kingdom. But at Poitiers he obtained the greatest of prizes, by taking prisoner the King of France. Not only the love of freedom tempted that prince to ransom himself by the utmost sacrifices, but his captivity left France defenceless, and seemed to annihilate the monarchy itself. The government was already odious; a spirit was awakened in the people, which might seem hardly to belong to the fourteenth century; and the convulsions of our own time are sometimes strongly paralleled by those which succeeded the battle of Poitiers. Already the States General had established a fundamental principle, that no resolution could be passed as the opinion of the whole, unless each of the three orders concurred in its adoption.† The right of levying and of regulating the collection of taxes was recognised. But that assembly which met at Paris immediately after the battle, went far greater lengths in the reform and control of government. From the time of Philip the Fair, the abuses natural to arbitrary power had harassed the people. There now seemed an opportunity of redress; and however seditious, or even treasonable, may have been the motives of those who guided this assembly of the States, especially the famous Marcel, it is clear that many of their reformations tended to liberty and the public good.‡ But the tumultuous scenes which passed in the capital, sometimes heightened into civil war, necessarily distracted men from the common defence against Edward. These tumults were excited, and the distraction increased, by Charles, king of Navarre surnamed the bad, to whom the French writers have, not perhaps unjustly, attributed a character of unmixed and inveterate malignity. He was grandson of Louis Hutin, by his daughter Jane, and, if Edward's pretence of claiming through females could be admitted, was a nearer heir to the crown; the consciousness of which seems to have suggested itself to his depraved mind as an excuse for his treacheries, though he could entertain very little prospect of asserting the claim against either contending party. John had bestowed his daughter in marriage on the King of Navarre; but he very soon gave a proof of his character, by procuring the assassination of the king's favourite, Charles de la Cerda. An irreconcilable enmity was the natural result of this crime. Charles became aware that he had offended beyond the possibility of forgiveness, and that no letters of pardon, nor pretended reconciliation, could secure him from the king's resentment. Thus, impelled by guilt into deeper guilt, he entered into alliances with Edward, and fomented the seditious spirit of Paris. Eloquent and insinuating, he was the favourite of the people, whose grievances he affected to pity, and with whose leaders he intrigued. As his paternal inheritance, he possessed the county of Evreux in Normandy. The proximity of this to Paris created a formidable diversion in favour of Edward III., and connected the English garrisons of the north with those of Poitou and Guienne.

There is no affliction which did not fall upon France during this miserable period. A foreign enemy was in the heart of the kingdom, the king a prisoner, the capital in sedition, a treacherous prince of the blood in arms against the sovereign authority. Famine, the sure and terrible companion of war, for several years desolated the country. In 1348, a pestilence, the most extensive and unsparing of which we have any memorial, visited France as well as the rest of Europe, and consummated the work of hunger and the sword.* The

* Au vray dire, les archers d'Angleterre faisoient à leurs gens grant avantage. Car ils tiroyent tant espessement, que les François ne sçavoyent dequel costé entendre, qu'ils ne fussent consuyvis de trayt; et s'avancoyent tousjours ces Anglois, et petit à petit enqueroyent terre.—Part I., c. 162

† Ordonnances des Rois de France, t. ii.

‡ I must refer the reader onward to the next chapter for more information on this subject. This separation is inconvenient, but it arose indispensably out of my arrangement, and prevented greater inconveniences.

* A full account of the ravages made by this memorable plague may be found in Matteo Villa

companies of adventure, mercenary troops in the service of John or Edward, finding no immediate occupation after the truce of 1357, scattered themselves over the country in search of pillage. No force existed sufficiently powerful to check these robbers in their career. Undismayed by superstition, they compelled the pope to redeem himself in Avignon by the payment of forty thousand crowns.* France was the passive victim of their license, even after the pacification concluded with England, till some were diverted into Italy, and others led by Du Guesclin to the war of Castile. Impatient of this wretchedness, and stung by the insolence and luxury of their lords, the peasantry of several districts broke out into a dreadful insurrection. [A. D. 1358.] This was called the Jacquerie, from the cant phrase Jacques bon homme, applied to men of that class; and was marked by all the circumstances of horror incident to the rising of an exasperated and unenlightened populace.†

Subdued by these misfortunes, though Edward had made but slight progress towards the conquest of the country, the regent of France, afterward Charles V., submitted to the peace of Bretigni. [A. D. 1360.] By this treaty, not to mention less important articles all Guienne, Gascony, Poitou, Saintonge, the Limousin, and the Angoumois, as well as Calais, and the county of Ponthieu, were ceded in full sovereignty to Edward; a price abundantly compensating his renunciation of the title of France, which was the sole concession stipulated in return. Every care seems to have been taken to make the cession of these provinces complete. The first six articles of the treaty expressly surrender them to the King of England. By the seventh, John and his son engage to convey within a year from the ensuing Michaelmas all their rights over them, and especially those of sovereignty and feudal appeal. The same words are repeated still more emphatically in the eleventh, and some other articles. The twelfth stipulates the change of mutual renunciations; by John, of all right over the ceded countries; by Edward, of his claim to the throne of France. At Calais, the treaty of Bretigni was renewed by John, who, as a prisoner, had been no party to the former compact, with the omission only of the twelfth article, respecting the exchange of renunciations. But that it was not intended to waive them by this omission, is abundantly manifest by instruments of both the kings, in which

Peace of Bretigni.

ni, the second of that family who wrote the history of Florence. His brother and predecessor, John Villani, was himself a victim to it. The disease began in the Levant about 1346; from whence Italian traders brought it to Sicily, Pisa, and Genoa. In 1348 it passed the Alps and spread over France and Spain; in the next year it reached Britain, and in 1350 laid waste Germany and other northern states; lasting generally about five months in each country. At Florence, more than three out of five died.—Muratori, Script. Rerum Italicarum, t. xiv., p. 12. The stories of Boccaccio's Decamerone, as is well known, are supposed to be related by a society of Florentine ladies and gentlemen retired to the country during this pestilence.

* Froissart, p. 187. This troop of banditti was commanded by Arnaud de Cervole, surnamed l'Archiprêtre, from a benefice which, although a layman, he possessed, according to the irregularity of those ages. See a memoir on the life of Arnaud de Cervole, in the twenty-fifth volume of the Academy of Inscriptions.

† The second continuator of Nangis, a monk of no great abilities, but entitled to notice as our most contemporary historian, charges the nobility with spending the money raised upon the people by oppressive taxes, in playing at dice "et alios indecentes jocos."—D'Achery, Spicilegium, t. iii., p. 114 (folio edition). All the miseries that followed the battle of Poitiers he ascribes to bad government and neglect of the common weal; but especially to the pride and luxury of the nobles. I am aware that this writer is biased in favour of the King of Navarre; but he was an eyewitness of the people's misery, and perhaps a less exceptionable authority than Froissart, whose love of pageantry and habits of feasting in the castles of the great, seem to have produced some insensibility towards the sufferings of the lower classes. It is a painful circumstance, which Froissart and the continuator of Nangis attest, that the citizens of Calais, more interesting than the common heroes of history, were unrewarded, and begged their bread in misery throughout France. Villaret contradicts this, on the authority of an ordinance which he has seen in their favour. But that was not a time when ordinances were very sure of execution.—Vill., t. ix., p. 470. I must add, that the celebrated story of the six citizens of Calais, which has of late been called in question, receives strong confirmation from John Villani, who died very soon afterward. —L. xii., c. 96. Froissart of course wrought up the circumstances after his manner. In all the colouring of his history, he is as great a master as Livy: and as little observant of particular truth. M. de Bréquigny, almost the latest of those excellent antiquaries whose memoirs so much illustrate the French Academy of Inscriptions, has discussed the history of Calais, and particularly this remarkable portion of it.—Mém. de l'Acad. des Inscriptions, t. l.

Petrarch has drawn a lamentable picture of the state of France in 1360, when he paid a visit to Paris. I could not believe, he says, that this was the same kingdom which I had once seen so rich and flourishing. Nothing presented itself to my eyes but a fearful solitude, an extreme poverty, lands uncultivated, houses in ruins. Even the neighbourhood of Paris manifested everywhere marks of destruction and conflagration. The streets are deserted; the roads overgrown with weeds: the whole is a vast solitude.—Mém. de Pétrarque, t. iii, p. 541.

refe.ence is made to their future interchanges at Bruges, on the feast of St. Andrew, 1361. And, until that time should arrive, Edward promises to lay aside the title and arms of France (an engagement which he strictly kept),* and John to act in no respect as king or suzerain over the ceded provinces Finally, on November 15, 1361, two commissioners are appointed by Edward to receive the renunciations of the King of France at Bruges on the ensuing feast of St. Andrew,† and to do whatever might be mutually required by virtue of the treaty. These, however, seem to have been withheld, and the twelfth article of the treaty of Bretigni was never expressly completed. By mutual instruments, executed at Calais, October 24, it had been declared, that the sovereignty of the ceded provinces, as well as Edward's right to the crown of France, should remain as before, although suspended as to its exercise, until the exchange of renunciations. notwithstanding any words of present conveyance or release in the treaties of Bretigni and Calais. And another pair of letters patent, dated October 26, contains the form of renunciations, which, it is mutually declared, should have effect by virtue of the present letters, in case one party should be ready to exchange such renunciations at the time and place appointed, and the other should make default therein. These instruments, executed at Calais, are so prolix, and so studiously enveloped, as it seems, in the obscurity of technical language, that it is difficult to extract their precise intention. It appears, nevertheless, that whichever party was prepared to perform what was required of him at Bruges on November 30, 1361, the other, then and there making default, would acquire not only what our lawyers might call an equitable title, but an actual vested right, by virtue of the provision in the letters patent of October 26, 1360. The appointment above mentioned of Edward's commissioners on November 15, 1361, seems to throw upon the French the burden of proving that John sent his envoys with equally full powers to the place of meeting, and that the non-interchange of renunciations was owing to the English government. But though an historian, sixty years later (Juvenal des Ursins), asserts that the French commissioners attended at Bruges, and that those of Edward made default, this is certainly rendered improbable, by the actual appointment of commissioners made by the King of England on the 15th of November, by the silence of Charles V. after the recommencement of hostilities, who would have rejoiced in so good a ground of excuse, and by the language of some English instruments. complaining that the French renunciations were withheld.* It is suggested by the French authors, that Edward was unwilling to execute a formal renunciation of his claim to the crown. But we can hardly suppose that, in order to evade this condition, which he had voluntarily imposed upon himself by the treaties of Bretigni and Calais, he would have left his title to the provinces ceded by those conventions imperfect. He certainly deemed it indefeisible, and acted without any complaint from the Frenc

* Edward gives John the title of King of France, in an instrument bearing date at Calais, October 22, 1360.—Rymer, t. vi. p. 217. The treaty was signed October 24.—Id., p. 219.

† Rymer, t. vi., p. 338

* It appears that, among other alleged infractions of the treaty, the King of France had received appeals from Armagnac, Albret, and other nobles of Aquitaine, not long after the peace. For, in February, 1362, a French envoy, the Count de Tancarville, being in England, the privy council presented to Edward their bill of remonstrances against this conduct of France; et semble au conseil le roy d'Angleterre que consideré la fourme de la ditte paix, qui tant estoit honourable et proffitable au royaume de France et à tout chretienté, que la reception desdittes appellacions, n'a mie esté bien faite, ne passée si ordenément, ne à si bon affection et amour comme il droit avoir esté faite de raison parmi l'effet et l'intention de la paix, et ailliances affermées et entr'eux semble estre moult prejudiciables et contraires à l'onneur et à l'estat du roy et de son fils le prince et de toute la maison d'Angleterre, et pourra estre evidente matiere de rebellion des subgiez, et aussi donner tres-grant occasion d'enfraindre la paix, si bon remede sur ce n'y soit mis plus hastivement. Upon the whole, they conclude that, if the King of France would repair this trespass, and send his renunciation of sovereignty, the king should send his of the title of France.—Martenne, Thes. Anec., t. i., p. 1487.

Four princes of the blood, or, as they are termed, Seigneurs des Fleurdelys, were detained as hostages for the due execution of the treaty of Bretigni, which, from whatever pretence, was delayed for a considerable time. Anxious to obtain their liberty, they signed a treaty at London in November, 1362, by which, among other provisions, it was stipulated that the King of France should send fresh letters, under his seal, conveying and releasing the territories ceded by the peace, without the clause contained in the former letters, retaining the ressort: et que en ycelles lettres soit expressement compris transport de la souveraineté et du ressort, &c. Et le roi d'Engleterre et ses enfans ferront semblablement autiels renonciations, sur ce q'il doit faire de sa partie.—Rymer, t. vi., p. 396. This treaty of London was never ratified by the French government; but I use it as a proof that Edward imputed the want of mutual renunciations to France, and was himself ready to perform his part of the treaty.

court, as the perfect master of those countries. He created his son Prince of Aquitaine, with the fullest powers over that new principality, holding it in fief of the crown of England by the yearly rent of an ounce of gold.* And the court of that great prince was kept for several years at Bordeaux.

I have gone something more than usual into detail as to these circumstances, because a very specious account is given by some French historians and antiquaries, which tends to throw the blame of the rupture in 1368 upon Edward III.† Unfounded as was his pretension to the crown of France, and actuated as we must consider him by the most ruinous ambition, his character was unblemished by ill faith. There is no apparent cause to impute the ravages made in France by soldiers formerly in the English service to his instigation, nor any proof of a connexion with the King of Navarre subsequently to the peace of Bretigni. But a good lesson may be drawn by conquerors from the change of fortune that befell Edward III. A long warfare, and unexampled success, had procured for him some of the richest provinces of France. Within a short time he was entirely stripped of them, less through any particular misconduct, than in consequence of the intrinsic difficulty of preserving such acquisitions. The French were already knit together as one people; and even those whose feudal duties sometimes led them into the field against their sovereign, could not endure the feeling of dismemberment from the monarchy When the peace of Bretigni was to be carried into effect, the nobility of the south remonstrated against the loss of the king's sovereignty, and showed, it is said, in their charters granted by Charlemagne, a promise never to transfer the right of protecting them to another. The citizens of Rochelle implored the king not to desert them, and protested their readiness to pay half their estates in taxes rather than fall under the power of England. John, with heaviness of heart, persuaded these faithful people to comply with that destiny which he had not been able to surmount. At length they sullenly submitted: we will obey they said, the English with our lips, but our hearts shall never forget their allegiance.* Such unwilling subjects might perhaps have been won by a prudent government; but the temper of the Prince of Wales, which was rather stern and arbitrary, did not conciliate their hearts to his cause.† After the expedition into Castile, a most injudicious and fatal enterprise, he attempted to impose a heavy tax upon Guienne. This was extended to the lands of the nobility, who claimed an immunity from all impositions. Many of the chief lords in Guienne and Gascony carried their complaints to the throne of Charles V., who had succeeded his father in 1364, appealing to him as the prince's sovereign and judge. After a year's delay, the king ventured to summon the Black Prince to answer these charges before the peers of France [A. D. 1368], and the war immediately recommenced between the two countries.‡

Charles V. Rupture of the peace of Bretigni

Though it is impossible to reconcile the conduct of Charles upon this occasion to those stern principles of rectitude which

* Rym., t. vi., p. 385-389. One clause is remarkable; Edward reserves to himself the right of creating the province of Aquitaine into a kingdom. So high were the notions of this great monarch, in an age when the privilege of creating new kingdoms was deemed to belong only to the pope and the emperor. Etiam si per nos hujusmodi provinciæ ad regalis honoris titulum et fastigium imposterum sublimentur; quam erectionem faciendam per nos ex tunc specialiter reservamus.

† Besides Villaret, and other historians, the reader who feels any curiosity on this subject may consult three memoirs in the 15th volume of the Academy of Inscriptions by MM. Sécousse, Salier, and Bonamy. These distinguished antiquaries unite, but the third with much less confidence and passion than the other two, in charging the omission upon Edward. The observations in the text will serve, I hope, to repel their arguments, which, I may be permitted to observe, no English writer has hitherto undertaken to answer. This is not said in order to assume any praise to myself; in fact, I have been guided, in a great degree, by one of the adverse counsel, M. Bonamy, whose statement of facts is very fair, and makes me suspect a little that he saw the weakness of his own cause.

The authority of Christine de Pisan, a contemporary panegyrist of the French king, is not perhaps very material in such a question: but she seems wholly ignorant of this supposed omission on Edward's side, and puts the justice of Charles V.'s war on a very different basis; namely, that treaties not conducive to the public interest ought not to be kept.—Collection des Mémoires, t. v., p. 137 A principle more often acted upon than avowed.

* Froissart, part i., chap. 214.

† See an anecdote of his difference with the Seigneur d'Albret, one of the principal barons in Gascony, to which Froissart, who was then at Bordeaux, ascribes the alienation of the southern nobility, chap. 244. Edward III., soon after the peace of Bretigni, revoked all his grants in Guienne.—Rymer, t. vi., p. 321.

‡ On November 20, 1368, some time before the summons of the Prince of Wales, a treaty was concluded between Charles, and Henry, king of Castile, wherein the latter expressly stipulates, that whatever parts of Guienne or England he might conquer, he would give up to the King of France —Rymer, t. vi., p. 598.

ought always to be obeyed, yet the exceeding injustice of Edward in the former war, and the miseries which he inflicted upon an unoffending people in the prosecution of his claim, will go far towards extenuating this breach of the treaty of Bretigni. It is observed, indeed, with some truth, by Rapin, that we judge of Charles's prudence by the event; and that, if he had been unfortunate in the war, he would have brought on himself the reproaches of all mankind, and even of those writers who are now most ready to extol him. But his measures had been so sagaciously taken, that except through that perverseness of fortune, against which, especially in war, there is no security, he could hardly fail of success. The elder Edward was declining through age, and the younger through disease; the ceded provinces were eager to return to their native king, and their garrisons, as we may infer by their easy reduction, feeble and ill supplied. France, on the other hand, had recovered breath after her losses: the sons of those who had fallen or fled at Poitiers were in the field; a king, not personally warlike, but eminently wise and popular, occupied the throne of the rash and intemperate John. She was restored by the policy of Charles V. and the valour of Du Guesclin. This hero, a Breton gentleman without fortune or exterior graces, was the greatest ornament of France during that age. Though inferior, as it seems, to Lord Chandos in military skill, as well as in the polished virtues of chivalry, his unwearied activity, his talent of inspiring confidence, his good fortune, the generosity and frankness of his character, have preserved a fresh recollection of his name, which has hardly been the case with our countryman.

In a few campaigns, the English were deprived of almost all their conquests, and even, in a great degree, of their original possessions in Guienne. They were still formidable enemies, not only from their courage and alacrity in the war, but on account of the keys of France which they held in their hands; Bordeaux, Bayonne, and Calais, by inheritance or conquest; Brest and Cherbourg, in mortgage from their allies, the Duke of Britany and King of Navarre. But the successor of Edward III. was Richard II.; a reign of feebleness and sedition gave no opportunity for prosecuting schemes of ambition. The war, protracted with few distinguished events for several years, was at length suspended by repeated armistices, not indeed very strictly observed, and which the animosity of the English would not permit to settle in any regular treaty. Nothing less than the terms obtained at Bretigni, emphatically called the Great Peace, would satisfy a frank and courageous people, who deemed themselves cheated by the manner of its infraction. The war was therefore always popular in England, and the credit which an ambitious prince, Thomas, duke of Gloucester, obtained in that country, was chiefly owing to the determined opposition which he showed to all French connexions. But the politics of Richard II. were of a different cast; and Henry IV. was equally anxious to avoid hostilities with France; so that, before the unhappy condition of that kingdom tempted his son to revive the claims of Edward in still more favourable circumstances, there had been thirty years of respite, and even some intervals of friendly intercourse between the two nations. Both, indeed, were weakened by internal discord; but France more fatally than England. But for the calamities of Charles VI.'s reign, she would probably have expelled her enemies from the kingdom. The strength of that fertile and populous country was recruited with surprising rapidity. Sir Hugh Calverley, a famous captain in the wars of Edward III., while serving in Flanders, laughed at the herald, who assured him that the King of France's army, then entering the country, amounted to 26,000 lances; asserting that he had often seen their largest musters, but never so much as a fourth part of the number.* The relapse of this great kingdom under Charles VI. was more painful and perilous than her first crisis; but she recovered from each through her intrinsic and inextinguishable resources.

The English lose all their conquests.

Charles V., surnamed the Wise, after a reign which, if we overlook a little obliquity in the rupture of the peace of Bretigni, may be deemed one of the most honourable in French history, dying prematurely, left the crown to his son, a boy of thirteen, under the care of three ambitious uncles, the dukes of Anjou, Berry, and Burgundy. Charles had retrieved the glory restored the tranquillity, revived the spirit of his country; the severe trials which exercised his regency, after the battle of Poitiers, had disciplined his mind; he became a sagacious statesman, an encourager of literature, a beneficent lawgiver. He erred doubtless, though upon plausible

Accession of Charles VI. 1380

* Froissart p ii., c. 143

grounds, in accumulating a vast treasure which the Duke of Anjou seized before he was cold in the grave. But all the fruits of his wisdom were lost in the succeeding reign In a government essentially popular, the youth or imbecility of the sovereign creates no material derangement. In a monarchy, where all the springs of the system depend upon one central force, these accidents, which are sure in the course of a few generations to recur, can scarcely fail to dislocate the whole machine. During the forty years that Charles VI. bore the name of king, rather than reigned in France, that country was reduced to a state far more deplorable than during the captivity of John.

A great change had occurred in the political condition of France during the fourteenth century. As the feudal militia became unserviceable, the expenses of war were increased through the necessity of taking troops into constant pay; and while more luxurious refinements of living heightened the temptations to profuseness, the means of enjoying them were lessened by improvident alienations of the domain. Hence taxes, hitherto almost unknown, were levied incessantly, and with all those circumstances of oppression which are natural to the fiscal proceedings of an arbitrary government. These, as has been said before, gave rise to the unpopularity of the two first Valois, and were nearly leading to a complete revolution in the convulsions that succeeded the battle of Poitiers The confidence reposed in Charles V.'s wisdom and economy kept every thing at rest during his reign, though the taxes were still very heavy. But the seizure of his vast accumulations by the Duke of Anjou, and the ill faith with which the new government imposed subsidies, after promising their abolition, provoked the people of Paris, and sometimes of other places, to repeated seditions. The States General not only compelled the government to revoke these impositions and restore the nation, at least according to the language of edicts, to all their liberties, but, with less wisdom, refused to make any grant of money. Indeed, a remarkable spirit of democratical freedom was then rising in those classes on whom the crown and nobility had so long trampled An example was held out by the Flemings, who, always tenacious of their privileges, because conscious of their ability to maintain them, were engaged in a furious conflict with Louis, count of Flanders The court of France took part in this war;* and after obtaining a decisive victory over the citizens of Ghent, Charles VI. returned to chastise those of Paris.† Unable to resist the royal army, the city was treated as the spoil of conquest; its immunities abridged; its most active leaders put to death: a fine of uncommon severity imposed; and the taxes renewed by arbitrary prerogative. But the people preserved their indignation for a favourable moment; and were unfortunately led by it, when rendered subservient to the ambition of others, into a series of crimes, and a long alienation from the interests of their country.

Seditions at Paris.

It is difficult to name a limit beyond which taxes will not be borne without impatience, when they appear to be called for by necessity, and faithfully applied; nor is it impracticable for a skilful minister to deceive the people in both these respects. But the sting of taxation is wastefulness. What high-spirited man could see without indignation the earnings of his labour, yielded ungrudgingly to the public defence, become the spoil of parasites and peculators? It is this that mortifies the liberal hand of public spirit; and those statesmen who deem

* The Flemish rebellion, which originated in an attempt, suggested by bad advisers to the count, to impose a tax upon the people of Ghent without their consent, is related in a very interesting manner by Froissart, p. ii., c. 37, &c., who equals Herodotus in simplicity, liveliness, and power over the heart. I would advise the historical student to acquaint himself with these transactions, and with the corresponding tumults at Paris. They are among the eternal lessons of history; for the unjust encroachments of courts, the intemperate passions of the multitude, the ambition of demagogues, the cruelty of vicious factions, will never cease to have their parallels and their analogies; while the military achievements of distant times afford, in general, no instruction, and can hardly occupy too little of our time in historical studies. The prefaces to the fifth and sixth volumes of the Ordonnances des Rois de France, contain more accurate information as to the Parisian disturbances than can be found in Froissart.

† If Charles VI. had been defeated by the Flemings, the insurrection of the Parisians, Froissart says, would have spread over France; toute gentillesse et noblesse eût été morte et perdue en France, nor would the Jacquerie have ever been si grande et si horrible, c. 120. To the example of the Gantois he ascribes the tumults which broke out about the same time in England as well as in France. c. 84. The Flemish insurrection would probably have had more important consequences, if it had been cordially supported by the English government. But the danger of encouraging that democratical spirit which so strongly leavened the commons of England, might justly be deemed by Richard II.'s council much more than a counterbalance to the advantage of distressing France. When too late, some attempts were made, and the Flemish towns acknowledged Richard as King of France in 1384.—Rymer t. vii., p. 448

the security of government to depend not on laws and armies, but on the moral sympathies and prejudices of the people, will vigilantly guard against even the suspicion of prodigality. In the present stage of society it is impossible to conceive that degree of misapplication which existed in the French treasury under Charles VI., because the real exigencies of the state could never again be so inconsiderable. Scarcely any military force was kept up; and the produce of the grievous impositions then levied was chiefly lavished upon the royal household, or plundered by the officers of government.* This naturally resulted from the peculiar and afflicting circumstances of this reign. The Duke of Anjou pretended to be entitled by the late king's appointment, if not by the constitution of France, to exercise the government as regent during the minority;† but this period, which would naturally be very short, a law of Charles V. having fixed the age of majority at thirteen, was [illegible] more abridged by consent; and after the young monarch's coronation, he was considered as reigning with full personal authority. Anjou, Berry, and Burgundy, together with the king's maternal uncle, the Duke of Bourbon, divided the actual exercise of government.

The first of these soon undertook an expedition into Italy, to possess himself of the crown of Naples, in which he perished. Berry was a profuse and voluptuous man, of no great talents; though his rank, and the middle position which he held between struggling parties, made him rather conspicuous throughout the revolutions of that age. The most respectable of the king's uncles, the Duke of Bourbon, being further removed from the royal stem, and of an unassuming character, took a less active part than his three coadjutors. Burgundy, an ambitious and able prince, maintained the ascendency, until Charles, weary of a restraint which had been protracted by his uncles till he was in his twenty-first year [A. D. 1387], took the reins into his own hands. The dukes of Burgundy and Berry retired from court, and the administration was committed to a different set of men, at the head of whom appeared the Constable de Clisson, a soldier of great fame in the English wars. The people rejoiced in the fall of the princes by whose exactions they had been plundered; but the new ministers soon rendered themselves odious by similar conduct. The fortune of Clisson, after a few years' favour, amounted to 1,700,000 livres, equal in weight of silver, to say nothing of the depreciation of money, to ten times that sum at present.*

[A. D. 1393.] Charles VI. had reigned five years from his minority, when he was seized with a derangement of intellect, which continued, through a series of recoveries and relapses, to his death. He passed thirty years in a pitiable state of suffering, neglected by his family, particularly by the most infamous of women, Isabel of Bavaria, his queen, to a degree which is hardly credible. The ministers were immediately disgraced; the princes reassumed their stations. For several years the Duke of Burgundy conducted the government. But this was in opposition to a formidable rival, Louis, duke of Or

Derangement of Charles VI.

* Froissart, b. iv., c. 46

* The expenses of the royal household, which under Charles V. were 94,000 livres, amounted in 1412 to 450,000.—Villaret, t. iii., p. 243. Yet the king was so ill supplied that his plate had been pawned. When Montagu, minister of the finances, was arrested, in 1409, all this plate was found concealed in his house.

† It has always been an unsettled point, whether the presumptive heir is entitled to the regency of France; and, if he be so to the regency, whether this includes the custody of the minor's person. The particular case of the Duke of Anjou is subject to a considerable apparent difficulty. Two instruments of Charles V., bearing the same date of October, 1374, as published by Dupuy (Traité de Majorité des Rois, p. 161), are plainly irreconcilable with each other; the former giving the exclusive regency to the Duke of Anjou, reserving the custody of the minor's person to other guardians; the latter conferring not only this custody, but the government of the kingdom, on the queen, and on the dukes of Burgundy and Bourbon, without mentioning the Duke of Anjou's name. Daniel calls these testaments of Charles V., whereas they are in the form of letters patent; and supposes that the king had suppressed both, as neither party seems to have availed itself of their authority in the discussions that took place after the king's death.—(Hist. de France, t. iii., p. 662, edit. 1720.) Villaret, as is too much his custom, slides over the difficulty without notice. But M. de Bréquigny (Mém. de l'Acad. des Inscript., t. l., p. 533) observes that the second of these instruments, as published by M. Sécousse, in the Ordonnances des Rois, t. vi., p. 406, differs most essentially from that in Dupuy, and contains no mention whatever of the government. It is therefore easily reconcileable with the first, that confers the regency on the Duke of Anjou. As Dupuy took it from the same source as Sécousse, namely, the Tresor des Chartes, a strong suspicion of wilful interpolation falls upon him, or upon the editor of this posthumous work, printed in 1655. This date will readily suggest a motive for such an interpolation, to those who recollect the circumstances of France at that time, and for some years before; Anne of Austria having maintained herself in possession of a testamentary regency against the presumptive hei-

leans, the king's brother. It was impossible that a prince so near to the throne, favoured by the queen perhaps with criminal fondness, and by the people on account of his external graces, should not acquire a share of power. He succeeded at length in obtaining the whole management of affairs; wherein the outrageous dissoluteness of his conduct, and still more the excessive taxes imposed, rendered him altogether odious. The Parisians compared his administration with that of the Duke of Burgundy; and from that time ranged themselves on the side of the latter and his family, throughout the long distractions to which the ambition of these princes gave birth

Parties of Burgundy and Orleans.

The death of the Duke of Burgundy, in 1404, after several fluctuations of success between him and the Duke of Orleans, by no means left his party without a head. Equally brave and ambitious, but far more audacious and unprincipled, his son John, surnamed Sans-peur, sustained the same contest. A reconciliation had been, however, brought about with the Duke of Orleans; they had sworn reciprocal friendship, and participated, as was the custom, in order to render these obligations more solemn, in the same communion. In the midst of this outward harmony [A. D. 1407], the Duke of Orleans was assassinated in the streets of Paris. After a slight attempt at concealment, Burgundy avowed and boasted of the crime, to which he had been instigated, it is said, by somewhat more than political jealousy.* From this fatal moment the dissensions of the royal family began to assume the complexion of civil war. The queen, the sons of the Duke of Orleans, with the dukes of Berry and Bourbon, united against the assassin. But he possessed, in addition to his own apanage of Burgundy, the county of Flanders as his maternal inheritance; and the people of Paris, who hated the Duke of Orleans, readily forgave, or rather exulted in, his murder.

Murder of the Duke of Orleans.

It is easy to estimate the weakness of the government from the terms upon which the Duke of Burgundy was permitted to obtain pardon at Chartres, a year after the perpetration of the crime. As soon as he entered the royal presence, every one rose, except the king, queen, and dauphin. The duke, approaching the throne, fell on his knees; when a lord, who acted as a sort of counsel for him, addressed the king: "Sire, the Duke of Burgundy, your cousin and servant, is come before you, being informed that he has incurred your displeasure on account of what he caused to be done to the Duke of Orleans your brother, for your good and that of your kingdom, as he is ready to prove when it shall please you to hear it; and therefore requests you, with all humility, to dismiss your resentment towards him, and to receive him into your favour."*

This insolent apology was all the atonement that could be extorted for the assassination of the first prince of the blood. [A. D. 1410.] It is not wonderful that the Duke of Burgundy soon obtained the management of affairs, and drove his adversaries from the capital. The princes, headed by the father-in-law of the young Duke of Orleans, the Count of Armagnac, from whom their party was now denominated, raised their standard against him; and the north of France was rent to pieces by a protracted civil war, in which neither party scrupled any extremity of pillage or massacre. Several times peace was made; but each faction, conscious of their own insincerity, suspected that of their adversaries. The king, of whose name both availed themselves, was only in some doubtful intervals of reason capable of rendering legitimate the acts of either. The dauphin, aware of the tyranny which the two parties alternately exercised, was forced, even at the expense of perpetuating a civil war, to balance one against the other, and permit neither to be wholly subdued. He gave peace to the Armagnacs at Auxerre, in despite of the Duke of Burgundy; and having afterward united with them against this prince [A. D. 1412], and carried a successful war into Flanders, he disappointed their revenge by concluding with him a treaty at Arras. [A. D. 1414.]

Civil war between the parties.

This dauphin, and his next brother, died within sixteen months of each other, by which the rank devolved upon Charles youngest son of the king. The Count of Armagnac, now Constable of France, retained possession of the government. But his severity and the weight of taxes revived the Burgundian party in Paris [A. D. 1417], which a rigid proscription had endeavoured to destroy. He brought on his head the implacable

April

* Orleans is said to have boasted of the Dutchess of Burgundy's favours.—Vill., t. xii., p. 474. Amelgard, who wrote about eighty years after the time, says, vim etiam inferre attentare præsumpsit.—Notices des Manuscrits du Roi, t. i., p. 411.

* Monstrelet, part i., f. 12.

hatred of the queen, whom he had not only shut out from public affairs, but disgraced by the detection of her gallantries. [A. D. 1417.] Notwithstanding her ancient enmity to the Duke of Burgundy, she made overtures to him, and, being delivered by his troops from confinement, declared herself openly on his side. A few obscure persons stole the city keys, and admitted the Burgundians into Paris. The tumult which arose showed in a moment the disposition of the inhabitants; but this was more horribly displayed a few days afterward, when the populace, rushing to the prisons [A. D. 1418], massacred the Constable d'Armagnac and his partisans. Between three and four thousand persons were murdered on this day, which has no parallel but what our own age has witnessed, in the massacre perpetrated by the same ferocious populace of Paris, under circumstances nearly similar. [A. D. 1419.] Not long afterward an agreement took place between the Duke of Burgundy, who had now the king's person, as well as the capital, in his hands, and the dauphin, whose party was enfeebled by the loss of almost all its leaders. This reconciliation, which mutual interest should have rendered permanent, had lasted a very short time, when the Duke of Burgundy was assassinated at an interview with Charles, in his presence, and by the hands of his friends, though not perhaps with his previous knowledge.*

June 12.

Assassination of the Duke of Burgundy.

From whomsoever the crime proceeded, it was a deed of infatuation, and plunged France afresh into a sea of perils, from which the union of these factions had just afforded a hope of extricating her.

It has been mentioned already that the English war had almost ceased during the reigns of Richard II. and Henry IV. The former of these was attached by inclination, and latterly by marriage, to the court of France: and though the French government showed at first some disposition to revenge his dethronement, yet the new king's success, as well as domestic quarrels, deterred it from any serious renewal of the war. A long commercial connexion had subsisted between England and Flanders, which the dukes of Burgundy, when they became sovereigns of the latter country upon the death of Count Louis, in 1384, were studious to preserve by separate truces.* They acted upon the same pacific policy when their interest predominated in the councils of France. Henry had even a negotiation pending for the marriage of his eldest son with a princess of Burgundy,† when an unexpected proposal from the opposite side set more tempting views before his eyes. The Armagnacs, pressed hard by the Duke of Burgundy, offered, in consideration of only 4000 troops, the pay of which they would themselves defray, to assist him in the recovery of Guienne and Poitou. Four princes of the blood, Berry, Bourbon, Orleans, and Alençon, disgraced their names by signing this treaty.‡ [A. D. 1412.] Henry broke off his alliance with Burgundy, and sent a force into France, which found, on its arrival, that the princes had made a separate treaty, without the least concern for their English allies. After his death, Henry V. engaged for some time in a series of negotiations with the French court, where the Orleans party now prevailed, and with the Duke of Burgundy. He even secretly treated at the same time for a marriage with Catharine of France (which seems

Intrigues of French princes with England.

May.

* There are three suppositions conceivable to explain this important passage in history, the assassination of John Sans-peur. 1. It was pretended by the dauphin's friends at the time, and has been maintained more lately (St. Foix, Essais sur Paris, t. iii., p. 209, edit. 1767), that he had premeditated the murder of Charles, and that his own was an act of self-defence. This is, I think, quite improbable; the dauphin had a great army near the spot, while the duke was only attended by five hundred men. Villaret indeed, and St. Foix, in order to throw suspicion upon the Duke of Burgundy's motives, assert that Henry V. accused him of having made proposals to him which he could not accept without offending God; and conjecture that this might mean the assassination of the dauphin. But the expressions of Henry do not relate to any private proposals of the duke, but to demands made by him and the queen, as proxies for Charles VI., in conference for peace, which he says he could not accept without offending God and contravening his own letters patent.—(Rymer, t. ix., p. 790.) It is not, however, very clear what this means. 2. The next hypothesis is, that it was the deliberate act of Charles. But his youth, his feebleness of spirit, and especially the consternation into which, by all testimonies, he was thrown by the event, are rather adverse to this explanation. 3. It remains only to conclude that Tanegui de Chastel, and other favourites of the dauphin, long attached to the Orleans faction, who justly regarded the duke as an infamous assassin, and might question his sincerity or their own safety if he should regain the ascendant, took advantage of this opportunity to commit an act of retaliation, less criminal, but not less ruinous in its consequences, than that which had provoked it. Charles, however, by his subsequent conduct, recognised their deed, and naturally exposed himself to the resentment of the young Duke of Burgundy.

† Rymer, t. viii., p. 511. Villaret, t. xvi., p. 174

‡ Idem, t. viii., p. 721.

* Rymer, t. viii., pp. 726, 737, 738.

to have been his favourite, as it was ultimately his successful project), and with a daughter of the duke; a duplicity not creditable to his memory.* But Henry's ambition, which aimed at the highest quarry, was not long fettered by negotiation; and indeed his proposals of marrying Catharine were coupled with such exorbitant demands, as France, notwithstanding all her weakness, could not admit; though she would have ceded Guienne, and given a vast dowry with the princess.† [A. D. 1415.] He invaded Normandy, took Harfleur, and won the great battle of Azincourt on his march to Calais.‡

Invasion of France by Henry V.

The flower of French chivalry was mowed down in this fatal day, but especially the chiefs of the Orleans party, and the princes of the royal blood, met with death or captivity. Burgundy had still suffered nothing; but a clandestine negotiation had secured the duke's neutrality, though he seems not to have entered into a regular alliance till a year after the battle of Azincourt: when, by a secret treaty at Calais, he acknowledged the right of Henry to the crown of France, and his own obligation to do him homage, though its performance was to be suspended till Henry should become master of a considerable part of the kingdom.§ In a second invasion the English achieved the conquest of Normandy; and this, in all subsequent negotiations for peace during the life of Henry, he would never consent to relinquish. After several conferences, which his demands rendered abortive, the French court at length consented to add Normandy to the cessions made in the peace at Bretigni;‖ and the treaty, though labouring under some difficulties, seems to have been nearly completed, when the Duke of Burgundy [A. D. 1419], for reasons unexplained, suddenly came to a reconciliation with the dauphin. This event, which must have been intended adversely to Henry, would probably have broken off all parley on the subject of peace, if it had not been speedily followed by one still more surprising, the assassination of the Duke of Burgundy at Montereau.

July 11

Sept. 10

An act of treachery so apparently unprovoked, inflamed the minds of that powerful party which had looked up to the duke as their leader and patron. The city of Paris especially abjured at once its respect for the supposed author of the murder, though the legitimate heir of the crown. A solemn oath was taken by all ranks to revenge the crime; the nobility, the clergy, the parliament, vying with the populace in their invectives against Charles, whom they now styled only pretended (soi-disant) dauphin. Philip, son of the assassinated duke, who, with all the popularity and much of the ability of his father, did not inherit his depravity, was instigated by a pardonable excess of filial resentment to ally himself with the King of England. These passions of the people and the Duke of Burgundy, concurring with the imbecility of Charles VI., and the rancour of Isabel towards her son, led to the treaty of Troyes. This compact, signed by the queen and duke, as proxies of the king, who had fallen into a state of unconscious idiocy, stipulated that Henry V., upon his marriage with Catharine, should become immediately regent of France, and, after the death of Charles, succeed to the kingdom, in exclusion not only of the dauphin, but of all the royal family.* It is unnecessary to remark that these flagitious provisions were absolutely invalid. But they had at the time the strong

Treaty of Troyes. May, 1420.

* Rymer, t. ix., p. 136.

† The terms required by Henry's ambassadors in 1415, were the crown of France; or, at least, reserving Henry's rights to that, Normandy, Touraine, Maine, Guienne, with the homage of Britany and Flanders. The French offered Guienne and Saintonge, and a dowry of 800,000 gold crowns for Catharine. The English demanded 2,000,000. —Rymer, t. ix., p. 218.

‡ The English army at Azincourt was probably of not more than 15,000 men; the French were, at the least, 50,000, and by some computations much more numerous. They lost 10,000 killed, of whom 9000 were knights or gentlemen. Almost as many were made prisoners. The English, according to Monstrelet, lost 1600 men; but their own historians reduce this to a very small number. It is curious that the Duke of Berry, who advised the French to avoid an action, had been in the battle of Poitiers fifty-nine years before.—Vill., t. xiii., p. 355.

§ Compare Rymer, t. ix., p. 34, 138, 304, 394. The last reference is to the treaty of Calais.

‖ Rym., t. ix., p. 628, 763. Nothing can be more insolent than the tone of Henry's instructions to his commissioners, p. 628.

* As if through shame on account of what was to follow, the first articles contain petty stipulations about the dower of Catharine. The sixth gives the kingdom of France, after Charles's decease, to Henry and his heirs. The seventh concedes the immediate regency. Henry kept Normandy by right of conquest, not in virtue of any stipulation in the treaty, which he was too proud to admit. The treaty of Troyes was confirmed by the States General, or rather by a partial convention which assumed the name, in December, 1420.—Rym., t. x., p. 30. The parliament of England did the same —Id., p. 110. It is printed at full length by Villaret, t. xv., p. 84.

sanction of force; and Henry might plausibly flatter himself with a hope of establishing his own usurpation as firmly in France as his father's had been in England. What neither the comprehensive policy of Edward III., the energy of the Black Prince, the valour of their Knollys and Chandoses, nor his own victories could attain, now seemed, by a strange vicissitude of fortune, to court his ambition. During two years that Henry lived after the treaty of Troyes, he governed the north of France with unlimited authority in the name of Charles VI. The latter survived his son-in-law but a few weeks; and the infant Henry VI. was immediately proclaimed King of France and England, under the regency of his uncle the Duke of Bedford.

State of France at the accession of Charles VII.

Notwithstanding the disadvantage of a minority, the English cause was less weakened by the death of Henry than might have been expected. [A. D. 1422.] The Duke of Bedford partook of the same character, and resembled his brother in faults as well as virtues; in his haughtiness and arbitrary temper, as in his energy and address. At the accession of Charles VII., the usurper was acknowledged by all the northern provinces of France, except a few fortresses, by most of Guienne, and the dominions of Burgundy. [A. D. 1423.] The Duke of Britany soon afterward acceded to the treaty of Troyes, but changed his party again several times within a few years. The central provinces, with Languedoc, Poitou, and Dauphiné, were faithful to the king. For some years the war continued without any decisive result; but the balance was clearly swayed in favour of England.

Causes of the success of the English.

For this it is not difficult to assign several causes. The animosity of the Parisians and the Duke of Burgundy against the Armagnac party still continued, mingled in the former with dread of the king's return, whom they judged themselves to have inexpiably offended. The war had brought forward some accomplished commanders in the English army; surpassing, not indeed in valour and enterprise, but in military skill, any whom France could oppose to them. Of these the most distinguished, besides the Duke of Bedford himself, were Warwick, Salisbury, and Talbot. Their troops, too, were still very superior to the French. But this, we must in candour allow, proceeded in a great degree from the mode in which they were raised. The war was so popular in England, that it was easy to pick the best and stoutest recruits,* and their high pay allured men of respectable condition to the service. We find in Rymer a contract of the Earl of Salisbury to supply a body of troops, receiving a shilling a day for every man at arms, and sixpence for each archer.† This is perhaps equal to fifteen times the sum at our present value of money. They were bound indeed to furnish their own equipments and horses. But France was totally exhausted by her civil and foreign war, and incompetent to defray the expenses even of the small force which defended the wreck of the monarchy. Charles VII. lived in the utmost poverty at Bourges.‡ The nobility had scarcely recovered from the fatal slaughter of Azincourt, and the infantry, composed of peasants or burgesses, which had made their army so numerous upon that day, whether from inability to compel their services, or experience of their inefficacy, were never called into the field. It became almost entirely a war of partisans. Every town in Picardy, Champagne, Maine, or wherever the contest might be carried on, was a fortress; and in the attack or defence of these garrisons, the valour of both nations was called into constant exercise. This mode of warfare was undoubtedly the best in the actual state of France, as it gradually improved her troops, and flushed them with petty successes. But what principally led to its adoption was the license and insubordination of the royalists, who, receiving no pay, owned no control, and thought that, provided they acted against the English and Burgundians, they were free to choose their own points of attack. Nothing can more evidently show the weakness of France, than the high terms by which Charles VII. was content to purchase the assistance of some Scottish auxiliaries. The Earl of Buchan was made constable; the Earl of Douglas had the dutchy of Touraine, with a new title, lieutenant-general of the kingdom. At a subsequent time, Charles offered the province of Saintonge to James I. for an aid of 6000 men. These Scots fought bravely for France, though unsuc

* Monstrelet, part i., f. 303.

† Rym., t. x., p. 392. This contract was for 600 men at arms, including six bannerets, and thirty-four bachelors; and for 1700 archers; bien et suffisamment montez, armez, et arraiez comme a leurs estats appartient. The pay was, for the earl, 6*s.* 8*d.* a day; for a banneret, 4*s.*; for a bachelor 2*s.*; for every other man at arms, 1*s.*; and for each archer, 6*d.* Artillery-men were paid higher than men at arms.

‡ Villaret xiv., p. 302.

cessfully, at Crevant and Verneuil; but it must be owned they set a sufficient value upon their service. Under all these disadvantages, it would be unjust to charge the French nation with any inferiority of courage, even in the most unfortunate periods of this war. Though frequently panic-struck in the field of battle, they stood sieges of their walled towns with matchless spirit and endurance. Perhaps some analogy may be found between the character of the French commonalty during the English invasion, and the Spaniards of the late peninsular war. But to the exertions of those brave nobles who restored the monarchy of Charles VII., Spain has afforded no adequate parallel.

Character of Charles VII.

It was, however, in the temper of Charles VII. that his enemies found their chief advantage. This prince is one of the few whose character has been improved by prosperity. During the calamitous morning of his reign, he shrunk from fronting the storm, and strove to forget himself in pleasure. Though brave, he was never seen in war; though intelligent, he was governed by flatterers. Those who had committed the assassination at Montereau under his eyes were his first favourites; as if he had determined to avoid the only measure through which he could hope for better success, a reconciliation with the Duke of Burgundy. The Count de Richemont, brother of the Duke of Britany, who became afterward one of the chief pillars of his throne, consented to renounce the English alliance, and accept the rank of constable, on condition that these favourites should quit the court. [A. D. 1424.] Two others, who successively gained a similar influence over Charles, Richemont publicly caused to be assassinated, assuring the king that it was for his own and the public good. Such was the debasement of morals and government which twenty years of civil war had produced! Another favourite, La Tremouille, took the dangerous office, and, as might be expected, employed his influence against Richemont, who for some years lived on his own domains, rather as an armed neutral than a friend, though he never lost his attachment to the royal cause.

It cannot therefore surprise us, that with all these advantages the regent Duke of Bedford had almost completed the capture of the fortresses north of the Loire, when he invested Orleans in 1428. If this city had fallen, the central provinces, which were less furnished with defensible places, would have lain open to the enemy; and it is said that Charles VII. in despair was about to retire into Dauphiné. At this time his affairs were restored by one of the most marvellous revolutions in history. A country girl overthrew the power of England. We cannot pretend to explain the surprising story of the Maid of Orleans; for, however easy it may be to suppose that a heated and enthusiastic imagination produced her own visions, it is a much greater problem to account for the credit they obtained, and for the success that attended her. Nor will this be solved by the hypothesis of a concerted stratagem; which, if we do not judge altogether from events, must appear liable to so many chances of failure, that it could not have suggested itself to any rational person. However, it is certain that the appearance of Joan of Arc turned the tide of war, which from that moment flowed without interruption in Charles's favour. A superstitious awe enfeebled the sinews of the English. They hung back in their own country, or deserted from the army, through fear of the incantations, by which alone they conceived so extraordinary a person to succeed.* As men always make sure of Providence for an ally, whatever untoward fortune appeared to result from preternatural causes was at once ascribed to infernal enemies; and such bigotry may be pleaded as an excuse, though a very miserable one, for the detestable murder of this heroine.†

Siege of Orleans.

Joan of Arc.

The spirit which Joan of Arc had roused did not subside. France recovered confidence in her own strength, which had been chilled by a long course of adverse fortune. The king, too, shook off his in-

* Rym., t. x., p. 458–472. This, however, is conjecture; for the cause of their desertion is not mentioned in these proclamations, though Rymer has printed it in their title. But the Duke of Bedford speaks of the turn of success as astonishing, and due only to the superstitious fear which the English had conceived of a female magician.—Rymer, t. x., p. 408.

† M. de l'Averdy, to whom we owe the copious account of the proceedings against Joan of Arc, as well as those which Charles VII. instituted in order to rescind the former, contained in the third volume of Notices des Manuscrits du Roi, has justly made this remark, which is founded on the eagerness shown by the university of Paris in the prosecution, and on its being conducted before an inquisitor; a circumstance exceedingly remarkable in the ecclesiastical history of France. But another material observation arises out of this. The maid was pursued with peculiar bitterness by her countrymen of the English, or rather Burgundian faction; a proof that, in 1430, their animosity against Charles VII. was still ardent.

The king retrieves his affairs.

dolence,* and permitted Richemont to exclude his unworthy favourites from the court. This led to a very important consequence. The Duke of Burgundy, whose alliance with England had been only the fruit of indignation at his father's murder, fell naturally, as that passion wore out, into sentiments more congenial to his birth and interests. A prince of the house of Capet could not willingly see the inheritance of his ancestors transferred to a stranger. And he had met with provocation both from the regent and the Duke of Gloucester, who, in contempt of all policy and justice, had endeavoured, by an invalid marriage with Jacqueline, countess of Hainault and Holland, to obtain provinces which Burgundy designed for himself. Yet the union of his sister with Bedford, the obligations by which he was bound, and, most of all, the favour shown by Charles VII. to the assassins of his father, kept him for many years on the English side, although rendering it less and less assistance. But at length he concluded a treaty at Arras, the terms of which he dictated rather as a conqueror, than as a subject negotiating with his sovereign. [A. D 1435.] Charles, however, refused nothing for such an end; and, in a very short time the Burgundians were ranged with the French against their old allies of England.

and is reconciled to the Duke of Burgundy

It was now time for the latter to abandon those magnificent projects of conquering France, which temporary circumstances alone had seemed to render feasible. But as it is a natural effect of good fortune in the game of war to render a people insensible to its gradual change, the English could not persuade themselves that their affairs were irretrievably declining. Hence they rejected the offer of Normandy and Guienne, subject to the feudal superiority of France, which was made to them at the congress of Arras;* and some years

Impolicy of the English.

* It is a current piece of history, that Agnes Sorel, mistress of Charles VII., had the merit of dissuading him from giving up the kingdom as lost, at the time when Orleans was besieged in 1428. Mezeray, Daniel, Villaret, and, I believe, every other modern historian, have mentioned this circumstance; and some of them, among whom is Hume, with the addition, that Agnes threatened to leave the court of Charles for that of Henry, affirming that she was born to be the mistress of a great king. The latter part of this tale is evidently a fabrication, Henry VI. being at the time a child of seven years old. But I have, to say the least, great doubts of the main story. It is not mentioned by contemporary writers. On the contrary, what they say of Agnes leads me to think the dates incompatible. Agnes died (in childbed, as some say) in 1450; twenty-two years after the siege of Orleans. Monstrelet says that she had been about five years in the service of the queen; and the king taking pleasure in her liveliness and wit, common fame had spread abroad that she lived in concubinage with him. She certainly had a child, and was willing that it should be thought the king's; but he always denied it, et le pouvoit bien avoir emprunté ailleurs. —Pt. iii., f. 25. Olivier de la Marche, another contemporary, who lived in the court of Burgundy, says, about the year 1444, le Roy avoit nouvellement eslévé une pauvre demoiselle, gentifemme, nommée Agnes Sorel, et mis en tel triumphe et tel pouvoir, que son estat estoit a comparer aux grandes princesses de Royaume, et certes c'estoit une des plus belles femmes que je vey oncques, et fit en sa qualité beaucoup au Royaume de France. Elle avancoit devers le Roy junes gens d'armes, et gentils compaignons, et dont le Roy depuis fut bien servy.—La Marche. Mém. Hist., t. viii., p. 145. Du Clercq, whose memoirs were first published in the same collection, says, that Agnes mourut par poison moult jeune.—Ib., t. viii., p. 410. And the continuator of Monstrelet, probably John Chartier, speaks of the youth and beauty of Agnes, which exceeded that of any other woman in France, and of the favour shown her by the king, which so much excited the displeasure of the dauphin, on his mother's account, that he was suspected of having caused her to be poisoned.—Fol. 68. The same writer affirms of Charles VII. that he was, before the peace of Arras, de moult belle vie et devote; but afterward enlaidit sa vie de tenir malles femmes en son hostel, &c., fol. 86.

It is for the reader to judge how far these passages render it improbable that Agnes Sorel was the mistress of Charles VII. at the siege of Orleans in 1428, and, consequently, whether she is entitled to the praise which she has received, of being instrumental in the deliverance of France. The tradition, however, is as ancient as Francis I., who made in her honour a quatrain which is well known. This probably may have brought the story more into vogue, and led Mezeray, who was not very critical, to insert it in his history, from which it has passed to his followers. Its origin was apparently the popular character of Agnes. She was the Nell Gwyn of France; and justly beloved, not only for her charity and courtesy, but for bringing forward men of merit, and turning her influence, a virtue very rare in her class, towards the public interest. From thence it was natural to bestow upon her, in after-times, a merit not ill suited to her character, but which an accurate observation of dates seems to render impossible. But whatever honour I am compelled to detract from Agnes Sorel, I am willing to transfer undiminished to a more unblemished female, the injured queen of Charles VII., Mary of Anjou, who has hitherto only shared with the usurper of her rights the credit of awakening Charles from his lethargy. Though I do not know on what foundation even this rests, it is not unlikely to be true, and, in deference to the sex, let it pass undisputed.

* Villaret says, Les plénipotentiaires de Charles offrirent la cession de la Normandie et de la Guienne *en toute propriété, sous la clause de l'hommage à la couronne*, t. xv., p. 174. But he does not quote his authority, and I do not like to rely on an historian not eminent for accuracy in fact, or precision in language. If his expression is correct, the French must have given up the feudal appeal, or *ressort*, which had been the great point in dispute between Edward III. and Charles V., preserving only the homage *per paragium*, as it was called, which im

afterward, when Paris, with the adjacent provinces, had been lost, the English ambassadors, though empowered by their private instructions to relax, stood upon demands quite disproportionate to the actual position of affairs.* As foreign enemies, they were odious even in that part of France which had acknowledged to Henry;† and when the Duke of Burgundy deserted their side, Paris and every other city were impatient to throw off the yoke. A feeble monarchy and a selfish council completed their ruin: the necessary subsidies were raised with difficulty [A. D. 1449], and, when raised, misapplied. It is a proof of the exhaustion of France, that Charles was unable, for several years, to reduce Normandy or Guienne, which were so ill provided for defence.‡ At last he came with collected strength to the contest, and, breaking an armistice upon slight pretences, within two years overwhelmed the English garrisons in each of these provinces. All the inheritance of Henry II. and Eleanor, all the conquests of Edward III. and Henry V., except Calais and a small adjacent district, were irrecoverably torn from the crown of England. A barren title, that idle trophy of disappointed ambition, was preserved, with strange obstinacy, to our own age.

They lose all their conquests.

In these second English wars, we find little left of that generous feeling which had, in general, distinguished the contemporaries of Edward III. The very virtues which a state of hostility promotes are not proof against its long continuance, and sink at last into brutal fierceness. Revenge and fear excited the two factions of Orleans and Burgundy to all atrocious actions. The troops serving under partisans on detached expeditions, according to the system of the war, lived at free quarters on the people. The histories of the time are full of their outrages, from which, as is the common case, the unprotected peasantry most suffered. Even those laws of war, which the courteous sympathies of chivalry had enjoined, were disregarded by a merciless fury. Garrisons surrendering after a brave defence were put to death. Instances of this are very frequent. Henry V. excepts Alain Blanchard, a citizen who had distinguished himself during the siege, from the capitulation of Rouen, and orders him to execution. At the taking of a town of Champagne, John of Luxemburg, the Burgundian general, stipulates that every fourth and sixth man should be at his discretion; which he exercises by causing them all to be hanged.* Four hundred English from Pontoise, stormed by Charles VII., in 1441, are paraded in chains and naked through the streets of Paris, and thrown afterward into the Seine. This infamous action cannot but be ascribed to the king.†

Condition of France during the second English wars.

At the expulsion of the English, France emerged from the chaos with an altered character and new features of government. The royal authority and supreme jurisdiction of the parliament were universally recognised. Yet there was a tendency towards insubordination left

Subsequent events in the reign of Charles VII

plied no actual supremacy. Monstrelet says only, que per certaines conditions luy seroient accordées les seigneuries de Guienne et Normandie.

* See the instructions given to the English negotiators in 1439, at length, in Rymer, t. x., p. 724.

† Villaret, t. xiv., p. 448.

‡ Amelgard, from whose unpublished memoirs of Charles VII. and Louis XI. some valuable extracts are made in the Notices des Manuscrits, t. i., p. 403, attributes the delay in recovering Normandy solely to the king's slothfulness and sensuality. In fact, the people of that province rose upon the English, and almost emancipated themselves, with little aid from Charles.

§ Monstrelet, passim. A long metrical complaint of the people of France, curious as a specimen of versification, as well as a testimony to the misfortunes of the time, may be found in this historian. — Part i., fol. 321. Notwithstanding the treaty of Arras, the French and Burgundians made continual incursions upon each other's frontiers, especially about Laon and in the Vermandois. So that the people had no help, says Monstrelet, si non de crier miserablement a Dieu leur createur vengeance; et que pis estoit, quand ils obtenoient aucun sauf-conduit d'aucuns capitaines peu en estoit entretenu, mesmement tout d'un parti. — Pt. ii., f. 139. These pillagers were called Ecorcheurs, because they stripped the people of their shirts. And this name superseded that of Armagnacs, by which one side had hitherto been known. Even Xaintrailles and La Hire, two of the bravest champions of France, were disgraced by these habits of outrage. — Ibid., fol. 144, 150, 175. Oliv. de la Marche, in Collect. des Mémoires, t. viii., p. 25; t. v., p. 323.

Pour la plupart, says Villaret, se faire guerrier, ou voleur de grands chemins, signifioit la même chose.

* Monstrelet, part ii., f. 79. This John of Luxemburg, count de Ligny, was a distinguished captain on the Burgundian side, and for a long time would not acquiesce in the treaty of Arras. He disgraced himself by giving up to the Duke of Bedford his prisoner Joan of Arc for 10,000 francs. The famous Count of St. Pol was his nephew, and inherited his great possessions in the county of Vermandois. Monstrelet relates a singular proof of the good education which his uncle gave him. Some prisoners having been made in an engagement, si fut le jeune Comte de St. Pol mis en voye de guerre, car le Comte de Ligny son oncle luy en feit occire aucuns, le quel y prenoit grand plaisir, part ii., fol. 95.

† Villaret, t. xv., p. 327.

among the great nobility, arising in part from the remains of old feudal privileges, but still more from that lax administration, which, in the convulsive struggles of the war, had been suffered to prevail. In the south were some considerable vassals, the houses of Foix, Albret, and Armagnac, who, on account of their distance from the seat of empire, had always maintained a very independent conduct. The dukes of Britany and Burgundy were of a more formidable character, and might rather be ranked among foreign powers than privileged subjects. The princes, too, of the royal blood, who, during the late reign, had learned to partake or contend for the management, were ill inclined towards Charles VII., himself jealous, from old recollections, of their ascendency. They saw that the constitution was verging rapidly towards an absolute monarchy, from the direction of which they would studiously be excluded. This apprehension gave rise to several attempts at rebellion during the reign of Charles VII., and to the war, commonly entitled, for the Public Weal (du bien public), under Louis XI. Among the pretences alleged by the revolters in each of these, the injuries of the people were not forgotten;* but from the people they received small support. Weary of civil dissension, and anxious for a strong government to secure them from depredation, the French had no inducement to intrust even their real grievances to a few malecontent princes, whose regard for the common good they had much reason to distrust. Every circumstance favoured Charles VII. and his son in the attainment of arbitrary power. The country was pillaged by military ruffians. Some of these had been led by the dauphin to a war in Germany, but the remainder still infested the high roads and villages. Charles established his companies of ordonnance, the basis of the French regular army, in order to protect the country from such depredators. They consisted of about nine thousand soldiers, all cavalry, of whom fifteen hundred were heavy-armed; a force not very considerable, but the first, except mere body guards, which had been raised in any part of Europe as a national standing army.* These troops were paid out of the produce of a permanent tax, called the taille; an innovation still more important than the former. But the present benefit cheating the people, now prone to submissive habits, little or no opposition was made; except in Guienne, the inhabitants of which had speedy reason to regret the mild government of England, and vainly endeavoured to return to its protection.†

[A. D. 1461.] It was not long before the new despotism exhibited itself in its harshest character. Louis XI., son of Charles VII., who, during his father's reign, had been connected with the discontented princes, came to the throne greatly endowed with those virtues and vices which conspire to the success of a king. Laborious vigilance in his character. business, contempt of pomp, affability to inferiors, were his excellences; qualities especially praiseworthy in an age characterized by idleness, love of

Louis XI.

* The confederacy formed at Nevers in 1441, by the dukes of Orleans and Bourbon, with many other princes, made a variety of demands, all relating to the grievances which different classes of the state, or individuals among themselves, suffered under the administration of Charles. These may be found at length in Monstrelet, p. ii., f. 193; and are a curious document of the change which was then working in the French constitution. In his answer, the king claims the right, in urgent cases, of levying taxes without waiting for the consent of the States General.

* Olivier de la Marche speaks very much in favour of the companies of ordonnance, as having repressed the plunderers, and restored internal police.—Collection des Mémoires, t. viii., p. 148. Amelgard pronounces a vehement philipic against them; but it is probable that his observation of the abuses they had fallen into was confined to the reign of Louis XI.—Notices des Manuscrits, ubi supra.

† The insurrection of Guienne in 1452, which for a few months restored that province to the English crown, is accounted for in the curious memoirs of Amelgard, above mentioned. It proceeded solely from the arbitrary taxes imposed by Charles VII. in order to defray the expenses of his regular army. The people of Bordeaux complained of exactions not only contrary to their ancient privileges, but to the positive conditions of their capitulation. But the king was deaf to such remonstrances. The province of Guienne, he says, then perceived that it was meant to subject it to the same servitude as the rest of France, where the leeches of the state boldly maintain, as a fundamental maxim, that the king has a right to tax all his subjects, how and when he pleases; which is to advance that in France no man has any thing that he can call his own, and that the king can take all at his pleasure; the proper condition of slaves, whose peculium, enjoyed by their master's permission, belongs to him, like their persons, and may be taken away whenever he chooses. Thus situated, the people of Guienne, especially those of Bordeaux, alarmed themselves, and excited by some of the nobility, secretly sought about for means to regain their ancient freedom; and having still many connexions with persons of rank in England, they negotiated with them, &c.—Notices des Manuscrits, p. 433. The same cause is assigned to this revolution by Du Clercq, also a contemporary writer, living in the dominions of Burgundy.—Collection des Mémoires, t. ix., p. 400 Villaret has not known, or not chosen to know any thing of the matter

pageantry, and insolence. To these virtues he added a perfect knowledge of all persons eminent for talents or influence in the countries with which he was connected, and a well-judged bounty, that thought no expense wasted to draw them into his service or interest. In the fifteenth century this political art had hardly been known, except perhaps in Italy; the princes of Europe had contended with each other by arms, sometimes by treachery, but never with such complicated subtlety of intrigue. Of that insidious cunning, which has since been brought to perfection, Louis XI. may be deemed not absolutely the inventor, but the most eminent improver; and its success has led perhaps to too high an estimate of his abilities. Like most bad men, he sometimes fell into his own snare, and was betrayed by his confidential ministers, because his confidence was generally reposed in the wicked. And his dissimulation was so notorious, his tyranny so oppressive, that he was naturally surrounded by enemies, and had occasion for all his craft to elude those rebellions and confederacies which might perhaps not have been raised against a more upright sovereign. At one time the monarchy was on the point of sinking before a combination, which would have ended in dismembering France. [A. D. 1461.]

League denominated of the Public Weal.

This was the league denominated of the Public Weal, in which all the princes and great vassals of the French crown were concerned: the dukes of Britany, Burgundy, Alençon, Bourbon, the Count of Dunois, so renowned for his valour in the English wars, the families of Foix and Armagnac; and, at the head of all, Charles, duke of Berry, the king's brother and presumptive heir So unanimous a combination was not formed without a strong provocation from the king, or at least without weighty grounds for distrusting his intentions; but the more remote cause of this confederacy, as of those which had been raised against Charles VII., was the critical position of the feudal aristocracy from the increasing power of the crown. This war of the Public Weal was in fact a struggle to preserve their independence; and from the weak character of the Duke of Berry, whom they would, if successful, have placed upon the throne, it is possible that France might have been in a manner partitioned among them, in the event of their success, or at least that Burgundy and Britany would have thrown off the sovereignty that galled them.

The strength of the confederates in this war much exceeded that of the king; but it was not judiciously employed, and, after an indecisive battle at Montlhery, they failed in the great object of reducing Paris, which would have obliged Louis to fly from his dominions. It was his policy to promise every thing, in trust that fortune would afford some opening to repair his losses, and give scope to his superior prudence. Accordingly, by the treaty of Conflans, he not only surrendered afresh the towns upon the Somme, which he had lately redeemed from the Duke of Burgundy, but invested his brother with the dutchy of Normandy as his appanage

Appanages.

The term appanage denotes the provision made for the younger children of a king of France. This always consisted of lands and feudal superiorities held of the throne by the tenure of peerage. It is evident that this usage, as it produced a new class of powerful feudatories, was hostile to the interests and policy of the sovereign, and retarded the subjugation of the ancient aristocracy. But a usage coeval with the monarchy was not to be abrogated, and the scarcity of money rendered it impossible to provide for the younger branches of the royal family by any other means. It was restrained, however, as far as circumstances would permit. Philip IV declared that the county of Poitiers, bestowed by him on his son, should revert to the crown on the extinction of male heirs. But this, though an important precedent, was not, as has often been asserted, a general law. Charles V. limited the appanages of his own sons to twelve thousand livres of annual value in land. By means of their appanages, and through the operation of the Salique-law, which made their inheritance of the crown a less remote contingency, the princes of the blood royal in France were at all times (for the remark is applicable long after Louis XI.) a distinct and formidable class of men, whose influence was always disadvantageous to the reigning monarch, and, in general, to the people.

No appanage had ever been granted in France so enormous as the dutchy of Normandy. One third of the whole national revenue, it is declared, was derived from that rich province. Louis could not therefore sit down under such terms as, with his usual insincerity, he had accepted at Conflans. In a very short time he attacked Normandy, and easily compelled his brother to take refuge in Britany; nor were his enemies ever able to procure the restitution of Charles's appanage. During the rest of his reign, Louis had

powerful coalitions to withstand; but his prudence and compliance with circumstances, joined to some mixture of good fortune, brought him safely through his perils. The Duke of Britany, a prince of moderate talents, was unable to make any formidable impression, though generally leagued with the enemies of the king. The less powerful vassals were successfully crushed by Louis with decisive vigour: the dutchy of Alençon was confiscated; the Count of Armagnac was assassinated; the Duke of Nemours, and the Constable of St. Pol, a politician as treacherous as Louis, who had long betrayed both him and the Duke of Burgundy, suffered upon the scaffold. The king's brother, Charles, after disquieting him for many years, died suddenly in Guienne [A. D. 1472], which had finally been granted as his appanage, with strong suspicions of having been poisoned by the king's contrivance. Edward IV. of England was too dissipated and too indolent to be fond of war; and, though he once entered France [A. D. 1475] with an army more considerable than could have been expected after such civil bloodshed as England had witnessed, he was induced, by the stipulation of a large pension, to give up the enterprise.* So terrible was still in France the apprehension of an English war, that Louis prided himself upon no part of his policy so much as the warding this blow. Edward showed a desire to visit Paris; but the king gave him no invitation, lest, he said, his brother should find some handsome women there, who might tempt him to return in a different manner. Hastings, Howard, and others of Edward's ministers, were secured by bribes in the interest of Louis, which the first of these did not scruple to receive at the same time from the Duke of Burgundy.†

House of Burgundy.

This was the most powerful enemy whom the craft of Louis had to counteract. In the last days of the feudal system, when the house of Capet had almost achieved the subjugation of those proud vassals among whom it had been originally numbered, a new antagonist sprung up to dispute the field against the crown. John, king of France, granted the dutchy of Burgundy by way of appanage to his third son, Philip. By his marriage with Margaret, heiress of Louis, count of Flanders, Philip acquired that province, Artois, the *county* of Burgundy (or Franche-comté), and the Nivernois. Philip the Good, his grandson, who carried the prosperity of this family to its height, possessed himself, by various titles, of the several other provinces which composed the Netherlands. These were fiefs of the empire, but latterly not much dependant upon it, and alienated by their owners without its consent. At the peace of Arras, the districts of Macon and Auxerre were absolutely ceded to Philip, and great part of Picardy conditionally made over to him, redeemable on the payment of four hundred thousand crowns.* These extensive, though not compact dominions, were abundant in population and wealth, fertile in corn, wine, and salt, and full of commercial activity. Thirty years of peace which followed the treaty of Arras, with a mild and free government raised the subjects of Burgundy to a degree of prosperity quite unparalleled in these times of disorder; and this was displayed in general sumptuousness of dress and feasting. The court of Philip and his son Charles was distinguished for its pomp and riches, for pageants and tournaments; the trappings of chivalry, perhaps without its spirit: for the military

Its successive acquisitions.

* The army of Edward consisted of 1500 men at arms, and 14,000 archers; the whole very well appointed.—Comines, t. xi., p. 238. There seems to have been a great expectation of what the English would do, and great fears entertained by Louis, who grudged no expense to get rid of them.

† Comines, l. vi., c. 2. Hastings had the mean cunning to refuse to give his receipt for the pension he took from Louis XI. "This present," he said to the king's agent, "comes from your master's good pleasure, and not at my request; and if you mean I should receive it, you may put it here into my sleeve, but you shall have no discharge from me; for I will not have it said that the Great Chamberlain of England is a pensioner of the King of France, nor have my name appear in the rooks of the Chambre des Comptes."—Ibid.

* The Duke of Burgundy was personally excused from all homage and service to Charles VII.; but if either died, it was to be paid by the heir, or to the heir. Accordingly, on Charles's death, Philip did homage to Louis. This exemption can hardly therefore have been inserted to gratify the pride of Philip, as historians suppose. Is it not probable that, during his resentment against Charles, he might have made some vow never to do him homage, which this reservation in the treaty was intended to preserve?

It is remarkable that Villaret says, the Duke of Burgundy was positively excused by the 25th article of the peace of Arras from doing homage to Charles, or *his successors kings of France*, t. xvi., p. 404. For this assertion too he seems to quote the Trésor des Chartes, where probably the original treaty is preserved. Nevertheless, it appears otherwise, as published by Monstrelet at full length, who could have no motive to falsify it; and Philip's conduct in doing homage to Louis is hardly compatible with Villaret's assertion. Daniel copies Monstrelet without any observation. In the same treaty, Philip is entitled Duke by the grace of God; which was reckoned a mark of independence, and not usually permitted to a vassal.

character of Burgundy had been impaired by long tranquillity.*

Character of Charles, Duke of Burgundy.

During the lives of Philip and Charles VII., each understood the other's rank, and their amity was little interrupted. But their successors, the most opposite of human kind in character, had one common quality, ambition, to render their antipathy more powerful. Louis was eminently timid and suspicious in policy; Charles intrepid beyond all men, and blindly presumptuous: Louis stooped to any humiliation to reach his aim; Charles was too haughty to seek the fairest means of strengthening his party. An alliance of his daughter with the Duke of Guienne, brother of Louis, was what the malecontent French princes most desired, and the king most dreaded; but Charles, either averse to any French connexion, or willing to keep his daughter's suitors in dependance, would never directly accede to that, or any other proposition for her marriage. On Philip's death, in 1467, he inherited a great treasure, which he soon wasted in the prosecution of his schemes. These were so numerous and vast, that he had not time to live, says Comines, to complete them, nor would one half of Europe have contented him. It was his intention to assume the title of king; and the Emperor Frederick III. was at one time actually on his road to confer this dignity, when some suspicion caused him to retire; and the project was never renewed.† It is evident that, if Charles's capacity had borne any proportion to his pride and courage, or if a prince less politic than Louis XI. had been his contemporary in France, the province of Burgundy must have been lost to the monarchy. For several years these great rivals were engaged, sometimes in open hostility, sometimes in endeavours to overreach each other; but Charles, though not much more scrupulous, was far less an adept in these mysteries of politics than the king.

Insubordination of the Flemish cities.

Notwithstanding the power of Burgundy, there were some disadvantages in its situation. It presented (I speak of all Charles's dominions under the common name, Burgundy) a very exposed frontier on the side of Germany and Switzerland, as well as France; and Louis exerted a considerable influence over the adjacent princes of the empire as well as the united cantons. The people of Liege, a very populous city, had for a long time been continually rebelling against their bishops, who were the allies of Burgundy; Louis was of course not backward to foment their insurrections; which sometimes gave the dukes a good deal of trouble. The Flemings, and especially the people of Ghent, had been during a century noted for their republican spirit and contumacious defiance of their sovereign. Liberty never wore a more unamiable countenance than among these burghers; who abused the strength she gave them by cruelty and insolence. Ghent, when Froissart wrote, about the year 1400, was one of the strongest cities in Europe, and would have required, he says, an army of two hundred thousand men to besiege it on every side, so as to shut up all access by the Lys and Scheldt. It contained eighty thousand men of age to bear arms;* a calculation which, although, as I presume, much exaggerated, is evidence of great actual populousness. Such a city was absolutely impregnable, at a time when artillery was very imperfect both in its construction and management. Hence, though the citizens of Ghent were generally beaten in the field with great slaughter, they obtained tolerable terms from their masters, who knew the danger of forcing them to a desperate defence.

No taxes were raised in Flanders, or indeed throughout the dominions of Burgundy, without consent of the three estates. In the time of Philip, not a great deal of money was levied upon the people; but Charles obtained every year a pretty large subsidy, which he expended in the hire of Italian and English mercenaries.† An almost uninterrupted suc-

* P. de Comines l. i., c. 2 and 3; l. v., c. 9. Du Clercq, in Collection des Mémoires, t. ix., p. 389. In the investiture granted by John to the first Philip of Burgundy, a reservation is made, that the royal taxes shall be exied throughout that appanage. But during the long hostility between the kingdom and dutchy, this could not have been enforced, and by the treaty of Arras, Charles surrendered all right to tax the duke's dominions.—Monstrelet, f. 114.

† Garnier, t. xviii., p. 62. It is observable that Comines says not a word of this; for which Garnier seems to quote Belcarius, a writer of the sixteenth age. But even Philip, when Morvilliers, Louis's chancellor, used menaces towards him, interrupted the orator with these words: Je veux que chacun sache que, si j'eusse voulu, je fusse roi.—Villaret t. xvii. p. 44.

* Froissart, part ii., c. 67.

† Comines, l. iv., c. 13. It was very reluctantly that the Flemings granted any money. Philip once begged for a tax on salt, promising never to ask anything more; but the people of Ghent, and, in imitation of them, the whole county, refused it.—Du Clercq, p. 389. Upon his pretence of taking the cross, they granted him a subsidy, though less than he had requested, on condition that it should

cess had attended his enterprises for a length of time, and rendered his disposition still more overweening. [A. D. 1474.] His first failure was before Nuz, a little town near Cologne, the possession of which would have made him nearly master of the whole course of the Rhine, for he had already obtained the landgraviate of Alsace. Though compelled to raise the siege, he succeeded in occupying, next year, the dutchy of Lorraine. But his overthrow was reserved for an enemy whom he despised, and whom none could have thought equal to the contest. [A. D. 1476.] The Swiss had given him some slight provocation, for which they were ready to atone; but Charles was unused to forbear; and perhaps Switzerland came within his projects of conquest.

Defeats of Charles at Granson and Morat.

At Granson, in the Pays de Vaud, he was entirely routed, with more disgrace than slaughter.* But, having reassembled his troops, and met the confederate army of Swiss and Germans at Morat, near Friburg, he was again defeated with vast loss. On this day the power of Burgundy was dissipated: deserted by his allies, betrayed by his mercenaries, he set his life upon another cast at Nancy, desperately giving battle to the Duke of Lorraine with a small dispirited army, and perished in the engagement. [A. D. 1477.]

His death.

Now was the moment when Louis, who had held back while his enemy was breaking his force against the rocks of Switzerland, came to gather a harvest which his labour had not reaped. Charles left an only daughter, undoubted heiress of Flanders and Artois, as well as of his dominions out of France; but whose right of succession to the dutchy of Burgundy was more questionable. Originally, the great fiefs of the crown descended to females; and this was the case with respect to the two first mentioned. But John had granted Burgundy to his son Philip by way of appanage; and it was contended that appanages reverted to the crown in default of male heirs. In the form of Philip's investiture, the dutchy was granted to him and his lawful heirs, without designation of sex. The construction, therefore, must be left to the established course of law. This, however, was by no means acknowledged by Mary, Charles's daughter, who maintained, both that no general law restricted appanages to male heirs, and that Burgundy had always been considered as a feminine fief, John himself having possessed it, not by reversion as king (for descendants of the first dukes were then living), but by inheritance derived through females.* Such was this question of succession between Louis XI. and Mary of Burgundy, upon the merits of whose pretensions I will not pretend altogether to decide; but shall only observe, that if Charles had conceived his daughter to be excluded from this part of his inheritance, he would probably, at Conflans or Peronne, where he treated upon the vantage-ground, have attempted at least to obtain a renunciation of Louis's claim.

Claim of Louis XI. to the succession of Burgundy.

There was one obvious mode of preventing all further contests, and of aggrandizing the French monarchy far more than by the reunion of Burgundy. This was the marriage of Mary with the dauphin, which was ardently

Conduct of Louis

not be levied if the crusade did not take place, which put an end to the attempt. The states knew well that the duke would employ any money they gave him in keeping up a body of gens d'armes like his neighbour, the King of France; and though the want of such a force exposed their country to pillage, they were too good patriots to place the means of enslaving it in the hands of their sovereign. Grand doute faisoient les sujets, et pour plusieurs raisons, de se mettre en cette sujetion, ou ils voyoient le royaume de France, a cause de ses gens d'armes. A la verité, leur grand doute n'estoit pas sans cause: car quand il se trouva cinq cens hommes d'armes, la volonté luy vint d'en avoir plus, et de plus hardiment entreprendre contre tous ses voisins.—Comines, l. iii., c. 4, 9.

Du Clercq, a contemporary writer of very good authority, mentioning the story of a certain widow who had remarried the day after her husband's death, says that she was in some degree excusable, because it was the practice of the duke and his officers to force rich widows into marrying their soldiers or other servants, t. ix., p. 418.

* A famous diamond, belonging to Charles of Burgundy, was taken in the plunder of his tent by the Swiss at Granson. After several changes of owners, most of whom were ignorant of its value, it became the first jewel in the French crown.—Garnier, t. xviii., p. 361.

* It is advanced with too much confidence by several French historians, either that the ordinances of Philip IV. and Charles V. constituted a general law against the descent of appanages to female heirs, or that this was a fundamental law of the monarchy.—Du Clos, Hist. de Louis XI., t. ii., p. 252. Garnier, Hist. de France, t. xviii., p. 258. The latter position is refuted by frequent instances of female succession; thus Artois had passed by a daughter of Louis le Male into the house of Burgundy. As to the above-mentioned ordinances, the first applies only to the county of Poitiers; the second does not contain a syllable that relates to succession.—(Ordonnances des Rois, t. vi., p. 54.) The doctrine of excluding female heirs was more consonant to the pretended Salique law, and the recent principles as to inalienability of domain, than to the analogy of feudal rules and precedents. M. Gaillard, in his Observations sur l'Histoire de Velly, Villaret, et Garnier, has a judicious note on this subject, t. iii., p. 304.

wished in France. Whatever obstacles might occur to this connexion, it was natural to expect on the opposite side; from Mary's repugnance to an infant husband, or from the jealousy which her subjects were likely to entertain, of being incorporated with a country worse governed than their own. The arts of Louis would have been well employed in smoothing these impediments.* But he chose to seize upon as many towns as, in those critical circumstances, lay exposed to him, and stripped the young dutchess of Artois and Franche Comté. Expectations of the marriage he sometimes held out, but, as it seems, without sincerity. Indeed, he contrived irreconcilably to alienate Mary by a shameful perfidy, betraying the ministers whom she had intrusted upon a secret mission to the people of Ghent, who put them to the torture, and afterward to death, in the presence and amid the tears and supplications of their mistress. [A. D. 1477.] Thus the French alliance becoming odious in France, this princess married Maximilian of Austria, son of the Emperor Frederick; a connexion which Louis strove to prevent, though it was impossible then to foresee that it was ordained to retard the growth of France, and to bias the fate of Europe during three hundred years. This war lasted till after the death of Mary, who left one son, Philip, and one daughter, Margaret. By a treaty of peace concluded at Arras in 1482, it was agreed that this daughter should become the dauphin's wife, with Franche Comté and Artois, which Louis held already for her dowry, to be restored in case the marriage should not take effect. The homage of Flanders, and appellant jurisdiction of the parliament over it, were reserved to the crown.

Meanwhile Louis was lingering in dis-
Sickness and death of Louis XI. ease and torments of mind, the retribution of fraud and tyranny. Two years before his death he was struck with an apoplexy, from which he never wholly recovered. As he felt his disorder increasing, he shut himself up in a palace near Tours, to hide from the world the knowledge of his decline.* His solitude was like that of Tiberius at Capreæ, full of terror and suspicion, and deep consciousness of universal hatred. All ranks, he well knew, had their several injuries to remember: the clergy, whose liberties he had sacrificed to the see of Rome, by revoking the Pragmatic Sanction of Charles VII.; the princes, whose blood he had poured upon the scaffold; the parliament, whose course of justice he had turned aside; the commons, who groaned under his extortion, and were plundered by his soldiery.† The palace fenced with portcullises and spikes of iron, was guarded by archers and cross bow men, who shot at any that approached by night. Few entered this den; but to them he showed himself in magnificent apparel, contrary to his former custom, hoping thus to disguise the change of his meager body. He distrusted his friends and kindred, his daughter and his son, the last of whom he had not suffered even to read or write, lest he should too soon become his rival. No man ever so much feared death, to avert which he stooped to every meanness, and sought every remedy. His physician had sworn that, if he were dismissed, the king would not survive a week; and Louis, enfeebled by sickness and terror, bore the rudest usage from this man, and endeavoured to secure his services by vast rewards. Always credulous in relics, though seldom restrained by superstition from any crime,‡ he eagerly bought up

* Robertson, as well as some other moderns, have maintained, on the authority of Comines, that Louis XI. ought in policy to have married the young princess to the Count of Angouleme, father of Francis I., a connexion which she would not have disliked. But certainly nothing could have been more adverse to the interests of the French monarchy than such a marriage, which would have put a new house of Burgundy at the head of those princes whose confederacies had so often endangered the crown. Comines is one of the most judicious of historians; but his sincerity may be rather doubtful in the opinion above mentioned; for he wrote in the reign of Charles VIII., when the Count of Angouleme was engaged in the same faction as himself.

* For Louis's illness and death, see Comines, l. vi., c. 7–12, an Garnier, t. xix., p. 112, &c Plessis, his last residence, about an English mile from Tours, is now a dilapidated farmhouse, and can never have been a very large building. The vestiges of royalty about it are few; but the principal apartments have been destroyed, either in the course of ages or at the revolution.

† See a remarkable chapter in Philip de Comines, l. iv., c. 19, wherein he tells us that Charles VII. had never raised more than 1,800,000 francs a year in taxes; but Louis XI., at the time of his death, raised 4,700,000, exclusive of some military impositions; et surement c'estoit compassion de voir et scavoir la pauvreté du peuple. In this chapter he declares his opinion that no king can justly levy money on his subjects without their consent, and repels all common arguments to the contrary.

‡ An exception to this was when he swore by the cross of St. Lo, after which he feared to violate his oath. The Constable of St. Pol, whom Louis invited with many assurances to court, bethought himself of requiring this oath before he trusted his promises, which the king refused; and St. Pol prudently stayed away. Garn., t. xviii., p 72 Some report that he had a similar respect for

treasures of this sort, and even procured a Calabrian hermit, of noted sanctity, to journey as far as Tours in order to restore his health. Philip de Comines, who attended him during this infirmity, draws a parallel between the torments he then endured and those he had formerly inflicted on others. Indeed, the whole of his life was vexation of spirit. "I have known him (says Comines), and been his servant in the flower of his age, and in the time of his greatest prosperity; but never did I see him without uneasiness and care. Of all amusements he loved only the chase, and hawking in its season And in this he had almost as much uneasiness as pleasure; for he rode hard, and got up early, and sometimes went a great way, and regarded no weather: so that he used to return very weary, and almost ever in wrath with some one. I think that from his childhood he never had any respite of labour and trouble to his death. And I am certain that if all the happy days of his life, in which he had more enjoyment than uneasiness, were numbered, they would be found very few; and at least that they would be twenty of sorrow for every one of pleasure."*

Charles VIII. was about thirteen years old when he succeeded his father Louis. [A. D. 1483.] Though the law of France fixed the majority of her kings at that age, yet it seems not to have been strictly regarded on this occasion, and at least Charles was a minor by nature, if not by law. A contest arose, therefore, for the regency, which Louis had intrusted to his daughter Anne, wife of the Lord de Beaujeu, one of the Bourbon family. The Duke of Orleans, afterward Louis XII., claimed it as presumptive heir of the crown, and was seconded by most of the princes. Anne, however, maintained her ground, and ruled France for several years in her brother's name with singular spirit and address, in spite of the rebellions which the Orleans party raised up against her. These were supported by the Duke of Britany, the last of the great vassals of the crown, whose daughter, as he had no male issue, was the object of as many suiters as Mary of Burgundy.

Charles VIII.

Affairs of Britany.

The dutchy of Britany was peculiarly circumstanced. The inhabitants, whether sprung from the ancient republicans of Armorica, or, as some have thought, from an emigration of Britons during the Saxon invasion, had not originally belonged to the body of the French monarchy. They were governed by their own princes and laws; though tributary, perhaps, as the weaker to the stronger to the Merovingian kings.* In the ninth century, the dukes of Britany did homage to Charles the Bald, the right of which was transferred afterward to the dukes of Normandy. This formality, at that time no token of real subjection, led to consequences beyond the views of either party. For when the feudal chains, that had hung so loosely upon the shoulders of the great vassals, began to be straitened by the dexterity of the court, Britany found itself drawn among the rest to the same centre. The old privileges of independence were treated as usurpation; the dukes were menaced with confiscation of their fief, their right of coining money disputed, their jurisdiction impaired by appeals to the parliament of Paris. However, they stood boldly upon their right, and always refused to pay *liege homage*, which implied an obligation of service to the lord, in contradistinction to *simple homage*, which was a mere symbol of feudal dependance.†

About the time that Edward III. made pretensions to the crown of France, a controversy somewhat resembling it arose in the dutchy of Britany, between the families of Blois and Montfort. This led to a long and obstinate war, connected all along as a sort of underplot with the great drama of France and England. At last, Montfort, Edward's ally, by the defeat and death of his antagonist, obtained the dutchy, of which Charles V. soon after gave him the investiture. This prince and his family were generally inclined to English connexions; but the Bretons would seldom permit them to be effectual. Two cardinal feelings guided the conduct of this brave and faithful people; the one, an attachment to the French nation and monarchy in opposition to foreign ene

a leaden image of the Virgin, which he wore in his hat; as alluded to by Pope: "A perjured prince a leaden saint revere."

* Comines, l. vi., c. 13.

* Gregory of Tours says, that the Bretons were subject to France from the death of Clovis, and that their chiefs were styled counts, not kings, l. iv., c. 4. However, it seems clear from Nigellus, a writer of the life of Louis the Debonair, that they were almost independent in his time. There was even a march of the Britannic frontier which separated it from France; and they had a king of their own. It is hinted, indeed, that they had been formerly subject; for, after a victory of Louis over them, Nigellus says, Imperio sociat *perdita regna diu*. In the next reign of Charles the Bald, Hincmar tells us, regnum undique a Paganis, et falsis Christianis, scilicet Britonibus, est circumscriptum.—Epist. 18. See, too, Capitularia Car. Calvi., A. D. 877, tit. 23.

† Villaret, t. xii., p. 82 t. xv., p. 199

mies; the other, a zeal for their own privileges, and the family of Montfort, in opposition to the encroachments of the crown. In Francis II., the present duke, the male line of that family was about to be extinguished. His daughter Anne was naturally the object of many suiters, among whom were particularly distinguished the Duke of Orleans, who seems to have been preferred by herself; the Lord of Albret, a member of the Gascon family of Foix, favoured by the Breton nobility, as most likely to preserve the peace and liberties of their country, but whose age rendered him not very acceptable to a youthful princess; and Maximilian, king of the Romans. Britany was rent by factions, and overrun by the armies of the regent of France, who did not lose this opportunity of interfering with its domestic troubles, and of persecuting her private enemy, the Duke of Orleans. Anne of Britany, upon her father's death, finding no other means of escaping the addresses of Albret, was married, by proxy, to Maximilian. [A. D. 1489.] This, however, aggravated the evils of the country, since France was resolved at all events to break off so dangerous a connexion. And as Maximilian himself was unable, or took not sufficient pains, to relieve his betrothed wife from her embarrassments, she was ultimately compelled to accept the hand of Charles VIII. He had long been engaged by the treaty of Arras to marry the daughter of Maximilian, and that princess was educated at the French court. But this engagement had not prevented several years of hostilities, and continual intrigues with the towns of Flanders against Maximilian. The double injury which the latter sustained in the marriage of Charles with the heiress of Britany seemed likely to excite a protracted contest; but the King of France, who had other objects in view, and perhaps was conscious that he had not acted a fair part, soon came to an accommodation, by which he restored Artois and Franche Comté.

Marriage of Charles VIII. to the Dutchess of Britany.

[A. D. 1492.] France was now consolidated into a great kingdom; the feudal system was at an end. The vigour of Philip Augustus, the paternal wisdom of St. Louis, the policy of Philip the Fair, had laid the foundations of a powerful monarchy, which neither the arms of England, nor seditions of Paris, nor rebellions of the princes, were able to shake. Besides the original fiefs of the French crown, it had acquired two countries beyond the Rhone which properly depended only upon the empire Dauphiné, under Philip of Valois, by the bequest of Humbert, the last of its princes; and Provence, under Louis XI., by that of Charles of Anjou.* [A. D. 1481.] Thus having conquered herself, if I may use the phrase, and no longer apprehensive of any foreign enemy, France was prepared, under a monarch flushed with sanguine ambition, to carry her arms into other countries, and to contest the prize of glory and power upon the ample theatre of Europe.†

* The country now called Dauphiné formed part of the kingdom of Arles or Provence, bequeathed by Rodolph III. to the Emperor Conrad II. But the dominion of the empire over these new acquisitions being little more than nominal, a few of the chief nobility converted their respective fiefs into independent principalities One of these was the lord or dauphin of Vienne, whose family became ultimately masters of the whole province. Humbert, the last of these, made John, son of Philip of Valois, his heir, on condition that Dauphiné should be constantly preserved as a separate possession, not incorporated with the kingdom of France. This bequest was confirmed by the Emperor Charles IV., whose supremacy over the province was thus recognised by the kings of France, though it soon came to be altogether disregarded.

Provence, like Dauphiné, was changed from a feudal dependance to a sovereignty, in the weakness and dissolution of the kingdom of Arles, about the early part of the eleventh century. By the marriage of Douce, heiress of the first line of sovereign counts, with Raymond Berenger, count of Barcelona, in 1112, it passed into that distinguished family. In 1167 it was occupied or usurped by Alfonso II., king of Arragon, a relation, but not heir, of the house of Berenger. Alfonso bequeathed Provence to his second son, of the same name, and from whom it descended to Raymond Berenger IV. This count dying without male issue in 1245, his youngest daughter Beatrice took possession by virtue of her father's testament. But this succession being disputed by other claimants, and especially by Louis IX., who had married her eldest sister, she compromised differences by marrying Charles of Anjou, the king's brother. The family of Anjou reigned in Provence, as well as in Naples, till the death of Joan in 1382, who, having no children, adopted Louis of Anjou, brother of Charles V., as her successor. This second Angevin line ended in 1481 by the death of Charles III., though Renier, duke of Lorraine, who was descended through a female, had a claim which it does not seem easy to repel by argument. It was very easy, however, for Louis XI., to whom Charles III. had bequeathed his rights, to repel it by force, and accordingly he took possession of Provence, which was permanently united to the crown by letters patent of Charles VIII. in 1486.‡

† The principal authority, exclusive of original writers, on which I have relied for this chapter, is the history of France by Velly, Villaret, and Garnier; a work which, notwithstanding several defects, has absolutely superseded those of Mezeray and Daniel. The part of the Abbé Velly comes down to the middle of the eighth volume (12mo edition), and of the reign of Philip de Valois. His continuator Villaret was interrupted by death in the seventeenth volume, and in the reign of Louis

‡ Art de verifier les Dates, t. iii., p. 445. Garnier, t. xix pp. 57 et

CHAPTER II.

ON THE FEUDAL SYSTEM, ESPECIALLY IN FRANCE.

PART I.

State of Ancient Germany.—Effects of the Conquest of Gaul by the Franks.—Tenures of Land.—Distinction of Laws.—Constitution of the ancient Frank Monarchy.—Gradual Establishment of Feudal Tenures.—Principles of a Feudal Relation.—Ceremonies of Homage and Investiture.—Military Service.—Feudal Incidents of Relief, Aid, Wardship, &c.—Different Species of Fiefs.—Feudal Law-books.

GERMANY, in the age of Tacitus, was divided among a number of independent tribes, differing greatly in population and importance. Their country, overspread with forests and morasses, afforded little arable land, and the cultivation of that little was inconstant. Their occupations were principally the chase and pasturage; without cities, or even any contiguous dwellings. They had kings, elected out of particular families; and other chiefs, both for war and administration of justice, whom merit alone recommended to the public choice. But the power of each was greatly limited; and the decision of all leading questions, though subject to the previous deliberation of the chieftains, sprung from the free voice of a popular assembly.* The principal men, however, of a German tribe fully partook of that estimation which is always the reward of valour, and commonly of birth. They were surrounded by a cluster of youths, the most gallant and ambitious of the nation, their pride at home, their protection in the field; whose ambition was flattered, or gratitude conciliated, by such presents as a leader of barbarians could confer. These were the institutions of the people who overthrew the empire of Rome, congenial to the spirit of infant societies, and such as travellers have found among nations in the same stage of manners throughout the world. And, although in the lapse of four centuries between the ages of Tacitus and Clovis, some change may have been wrought by long intercourse with the Romans, yet the foundations of their political system were unshaken.

Political state of ancient Germany.

When these tribes from Germany and the neighbouring countries poured down upon the empire, and began to form permanent settlements, they made a partition of the lands in the conquered provinces between themselves and the original possessors. The Burgundians and Visigoths took two thirds of their respective conquests, leaving the remainder to the Roman proprietor. Each Burgundian was quartered, under the gentle name of guest, upon one of the former tenants, whose reluctant hospitality confined him to the smaller portion of his estate.† The Vandals in Africa, a more furious race of plunderers, seized all the best lands.‡ The Lombards of Italy took a third part of the produce. We cannot discover any mention of a similar arrangement in the laws or history of the Franks.

Partition of lands in conquered provinces.

XI. In my references to this history, which for common facts I have not thought it necessary to make, I have merely named the author of the particular volume which I quote. This has made the above explanation convenient, as the reader might imagine that I referred to three distinct works. Of these three historians, Garnier, the last, is the most judicious, and, I believe, the most accurate. His prolixity, though a material defect, and one which has occasioned the work itself to become an immeasurable undertaking, which could never be completed on the same scale, is chiefly occasioned by too great a regard to details, and is more tolerable than a similar fault in Villaret, proceeding from a love of idle declamation and sentiment. Villaret, however, is not without merits. He embraces, perhaps, more fully than his predecessor Velly, those collateral branches of history which an enlightened reader requires almost in preference to civil transactions, the laws, manners, literature, and, in general, the whole domestic records of a nation. These subjects are not always well treated; but the book itself, to which there is a remarkably full index, forms upon the whole a great repository of useful knowledge. Villaret had the advantage of official access to the French archives, by which he has no doubt enriched his history; but his references are indistinct, and his composition breathes an air of rapidity and want of exactness. Velly's characteristics are not very dissimilar. The style of both is exceedingly bad, as has been severely noticed, along with their other defects, by Gaillard, in Observations sur l'Histoire de Velly, Villaret, et Garnier.—(4 vols. 12mo., Paris, 1806.)

* De minoribus rebus principes consultant, de majoribus omnes; ita tamen, ut ea quoque, quorum penes plebem arbitrium est, apud principes *pertractentur*.—Tac. de Mor. Germ., c. xi. Acidalius and Grotius contend for *prætractentur*; which would be neater, but the same sense appears to be conveyed by the common reading.

† Leg. Burgund., c. 54, 55.

‡ Procopius De Bello Vandal., l. i., c. 5.

It is, however, clear that they occupied, by public allotment or individual pillage, a great portion of the lands of France.

Allodial and Salique lands.

The estates possessed by the Franks, as their property, were termed *allodial;* a word which is sometimes restricted to such as had descended by inheritance.* These were subject to no burden except that of public defence. They passed to all the children equally, or, in their failure, to the nearest kindred.† But of these allodial possessions, there was a particular species, denominated Salique, from which females were expressly excluded. What these lands were, and what was the cause of the exclusion, has been much disputed. No solution seems more probable, than that the ancient lawgivers of the Salian Franks‡ prohibited females from inheriting the lands assigned to the nation upon its conquest of Gaul, both in compliance with their ancient usages, and in order to secure the military service of every proprietor. But lands subsequently acquired, by purchase or other means, though equally bound to the public defence, were relieved from the severity of this rule, and presumed not to belong to the class of Salique.§ Hence, in the Ripuary law, the code of a tribe of Franks settled upon the banks of the Rhine, and differing rather in words than in substance from the Salique-law, which it serves to illustrate, it is said, that a woman cannot inherit her grandfather's estate (hæreditas aviatica), distinguishing such family property from what the father might have acquired.* And Marculfus uses expressions to the same effect. There existed, however, a right of setting aside the law, and admitting females to succession by testament. It is rather probable, from some passages in the Burgundian code, that even the lands of partition (sortes Burgundionum) were not restricted to male heirs † And the Visigoths admitted women on equal terms to the whole inheritance.

Roman natives of Gaul.

A controversy has been maintained in France, as to the condition of the Romans, or, rather, the provincial inhabitants of Gaul, after the invasion of Clovis. But neither those who have considered the Franks as barbarian conquerors, enslaving the former possessors, nor the Abbé du Bos, in whose theory they appear as allies and friendly inmates, are warranted by historical facts. On the one hand, we find the Romans not only possessed of property, and governed by their own laws, but admitted to the royal favour, and the highest offices;‡ while the bishops and clergy, who were generally of that nation,§

* Allodial lands are commonly opposed to beneficiary or feudal; the former being strictly proprietary, while the latter depended upon a superior. In this sense the word is of continual recurrence in ancient histories, laws, and instruments. It sometimes, however, bears the sense of *inheritance;* and this seems to be its meaning in the famous 62d chapter of the Salique-law: de Alodis. Alodium interdum opponitur comparato, says Du Cange, in formulis veteribus. Hence, in the charters of the eleventh century, hereditary fiefs are frequently termed alodia.—Recueil des Historiens de France, t. xi., préface. Vaissette, Hist. de Languedoc, t. ii., p. 109.

† Leg. Salicæ, c. 62.

‡ The Salique-laws appear to have been framed by a Christian prince, and after the conquest of Gaul. They are therefore not older than Clovis. Nor can they be much later, since they were altered by one of his sons.

§ By the German customs, women, though treated with much respect and delicacy, were not endowed at their marriage. Dotem non uxor marito, sed maritus uxori confert.—Tacitus, c. 18. A similar principle might debar them of inheritance in fixed possessions. Certain it is, that the exclusion of females was not unfrequent among the Teutonic nations. We find it in the laws of the Thuringians and of the Saxons; both ancient codes, though not free from interpolation.—Leibnitz, Scriptores Rerum Brunswicensium, t. i., pp. 81 and 83. But this usage was repugnant to the principles of Roman law, which the Franks found prevailing in their new country, and to the natural feeling which leads a man to prefer his own descendants to collateral heirs. One of the precedents in Marculfus (l. ii., form 12) calls the exclusion of females diuturna et impia consuetudo. In another, a father addresses his daughter: Omnibus non habetur incognitum, quod, sicut lex Salica continet, de rebus meis, *quod mihi ex alode parentum meorum obvenit*, apud germanos tuos filios meos minime in hæreditate succedere poteras.—Formulæ Marculfo adjectæ, 49. These precedents are supposed to have been compiled about the latter end of the seventh century.

* C. 56.

† I had in former editions asserted the contrary of this, on the authority of Leg. Burgund., c. 78, which seemed to limit the succession of estates, called *sortes*, to male heirs. But the expressions are too obscure to warrant this inference; and M. Guizot (Essais Sur l'Hist. de France, vol. i., p. 95) refers to the 14th chapter of the same code for the opposite proposition. But this, too, is not absolutely clear, as a general rule.

‡ Daniel conjectures that Clotaire I. was the first who admitted Romans into the army, which had previously been composed of Franks. From this time we find many in high military command —(Hist. de la Milice Françoise. t. i., p. 11.) It seems by a passage in Gregory of Tours, by Du Bos (t. iii., p. 547), that some Romans affected the barbarian character by letting their hair grow. If this were generally permitted, it would be a stronger evidence of approximation between the two races than any that Du Bos has adduced. Montesquieu certainly takes it for granted that a Roman might change his law, and thus become to all material intents a Frank.—(Esprit des Loix, l. xxviii., c. 4.) But the passage on which he relies is read differently in the manuscripts.

§ Some bishops, if we may judge from their barbarous names, and other circumstances, were not

grew up continually in popular estimation, in riches, and in temporal sway. Yet it is undeniable that a marked line was drawn at the outset between the conquerors and the conquered. Though one class of Romans retained estates of their own, yet there was another, called tributary, who seem to have cultivated those of the Franks, and were scarcely raised above the condition of predial servitude. But no distinction can be more unequivocal than that which was established between the two nations in the *weregild*, or composition for homicide. Capital punishment for murder was contrary to the spirit of the Franks, who, like most barbarous nations, would have thought the loss of one citizen ill repaired by that of another. The weregild was paid to the relations of the slain, according to a legal rate. This was fixed by the Salique-law at six hundred solidi for an Antrustion of the king; at three hundred for a Roman *conviva regis* (meaning a man of sufficient rank to be admitted to the royal table); at two hundred for a common Frank; at one hundred for a Roman possessor of lands; and at forty-five for a tributary, or cultivator of another's property. In Burgundy, where religion and length of settlement had introduced different ideas, murder was punished with death. But other personal injuries were compensated, as among the Franks, by a fine, graduated according to the rank and nation of the aggrieved party.*

Distinction of laws.

The barbarous conquerors of Gaul and Italy were guided by notions very different from those of Rome, who had imposed her own laws upon all the subjects of her empire. Adhering in general to their ancient customs without desire of improvement, they left the former habitations in unmolested enjoyment of their civil institutions. The Frank was judged by the Salique or the Ripuary code; the Gaul followed that of Theodosius.* This grand distinction of Roman and barbarian, according to the law which each followed, was common to the Frank, Burgundian, and Lombard kingdoms. But the Ostrogoths, whose settlement in the empire and advance in civility of manners were earlier, inclined to desert their old usages, and adopt the Roman jurisprudence.† The laws of the Visigoths too were compiled by bishops upon a Roman foundation, and designed as a uniform code, by which both nations should be governed.‡ The name of Gaul or Roman was not entirely lost in that of Frenchman, nor had the separation of their laws ceased, even in the provinces north of the Loire, till after the time of Charlemagne.§ Ultimately, however, the feudal customs of succession, which depended upon principles quite remote from those of the civil law, and the rights of territorial justice which the barons came to possess, contributed to extirpate the Roman jurisprudence in that part of France. But in the south, from whatever cause, it survived the revolutions of the middle ages; and thus arose a leading division of that kingdom into *pays coutumiers* and *pays du droit écrit;* the former regulated by a vast variety of ancient usages, the latter by the civil law.‖

Romans. See, for instance, Gregory of Tours, l. vi., c. 9. But no distinction was made among them on this account. The composition for the murder of a bishop was nine hundred solidi; for that of a priest, six hundred of the same coin.—Leges Salicæ, c. 58.

* Leges Salicæ, c. 43. Leges Burgundionum, tit. 2. Murder and robbery were made capital by Childebert, king of Paris; but *Francus* was to be sent for trial in the royal court, *debilior persona in loco pendatur*.—Baluz., t. i., p. 17. I am inclined to think that the word *Francus* does not absolutely refer to the nation of the party; but rather to his rank, as opposed to *debilior persona;* and, consequently, that it had already acquired the sense of *freeman*, or *freeborn* (ingenuus), which is perhaps its strict meaning. Du Cange, voc. Francus, quotes the passage in this sense.

* Inter Romanos negotia causarum Romanis legibus præcipimus terminari.—Edict. Clotair. I., circ. 560. Baluz. Capitul., t. i., p. 7.

† Giannone, l. iii., c. 2.

‡ Hist. de Languedoc, t. i., p. 242. Heineccius. Hist. Juris German., c. i., s. 15.

§ Suger, in his life of Louis VI., uses the expression lex Salica (Recueil des Historiens, t. xii., p. 24); and I have some recollection of having met with the like words in other writings of as modern a date. But I am not convinced that the original Salique code was meant by this phrase, which may have been applied to the local feudal customs. The capitularies of Charlemagne are frequently termed lex Salica. Many of these are copied from the Theodosian code.

‖ This division is very ancient, being found in the edict of Pistes, under Charles the Bald, in 864; where we read, in illis regionibus, quæ legem Romanam sequuntur.—(Recueil des Historiens, t. vii., p. 664.) Montesquieu thinks that the Roman law fell into disuse in the north of France on account of the superior advantages, particularly in point of composition for offences, annexed to the Salique-law; while that of the Visigoths being more equal, the Romans under their government had no inducement to quit their own code.—(Esprit des Loix, l. xxviii., c. 4.) But it does not appear that the Visigoths had any peculiar code of laws till after their expulsion from the kingdom of Toulouse. They then retained only a small strip of territory in France, about Narbonne and Montpelier.

However, the distinction of men according to their laws was preserved for many centuries, both in France and Italy. A judicial proceeding of the

The kingdom of Clovis was divided into a number of districts, each under the government of a count, a name familiar to Roman subjects, by which they rendered the *graf* of the Germans. The authority of this officer extended over all the inhabitants, as well Franks as natives. It was his duty to administer justice, to preserve tranquillity, to collect the royal revenues, and to lead, when required, the free proprietors into the field.* The title of a duke implied a higher dignity, and commonly gave authority over several counties.† These offices were originally conferred during pleasure; but the claim of a son to succeed his father would often be found too plausible or too formidable to be rejected, and it is highly probable that, even under the Merovingian kings, these provincial governors had laid the foundations of that independence which was destined to change the countenance of Europe.* The Lombard dukes, those especially of Spoleto and Benevento, acquired very early an hereditary right of governing their provinces and that kingdom became a sort of federal aristocracy.†

Provincial government of the French Empire.

The throne of France was always filled by the royal house of Meroveus However complete we may imagine the elective rights of the Franks, it is clear that a fundamental law restrained them to this family. Such indeed had been the monarchy of their ancestors the Germans; such long continued to be those of Spain, of England, and perhaps of all European nations. The reigning family was immutable; but at every vacancy the heir awaited the confirmation of a popular election, whether that were a substantial privilege, or a mere ceremony. Exceptions, however, to the lineal succession, are rare in the history of any country, unless where an infant heir was thought unfit to rule a nation of freemen. But in fact it is vain to expect a system

Succession to the French monarchy.

year 918, published by the historians of Languedoc (t. ii., Appendix, p. 56), proves that the Roman, Gothic, and Salique codes were then kept perfectly separate, and that there were distinct judges for the three nations. The Gothic law is referred to as an existing authority in a charter of 1070.—Idem, t. iii., p. 274. De Marca, Marca Hispanica, p. 1159. Every man, both in France (Hist. de Languedoc, t. ii., Appendix, p. 69) and in Italy, seems to have had the right of choosing by what law he would be governed. Volumus, says Lothaire I. in 824, ut cunctus populus Romanus interrogetur, quali lege vult vivere, ut tali, quali professi fuerint vivere velle, vivant. Quod si offensionem contra eandem legem fecerint, eidem legi quum profitentur, subjaceant. Women upon marriage usually changed their law, and adopted that of their husband, returning to their own in widowhood; but to this there are exceptions. Charters are found, as late as the twelfth century, with the expression, qui professus sum lege Longobardicâ [aut] lege Salicâ [aut] lege Alemannorum vivere. But soon afterward the distinctions were entirely lost, partly through the prevalence of the Roman law, and partly through the multitude of local statutes in the Italian cities.—Muratori, Antiquitates Italiæ, Dissertat. 22. Du Cange, v. Lex. Heineccius, Historia Juris Germanici, c. ii., s. 51.

* Marculfi Formulæ, l. i., 32.

† Houard, the learned translator of Littleton (Anciens Loix des François, t. i., p. 6), supposes these titles to have been applied indifferently. But the contrary is easily proved, and especially by a line of Fortunatus, quoted by Du Cange and others:

"Qui modo dat Comitis, det tibi jura Ducis."

The cause of M. Houard's error may perhaps be worth noticing. In the above cited form of Marculfus, a *precedent* (in law language) is given for the appointment of a duke, count, or patrician. The material part being the same, it was only necessary to *fill up the blanks*, as we should call it, by inserting the proper designation of office. It is expressed therefore, actionem *comitatus, ducatus, aut patriciatus* in *pago illo*, quam *antecessor tuus ille* usque nunc visus est egisse, tibi agendum regendumque commisimus. Montesquieu has fallen into a similar mistake (l. xxx., c. 16), forgetting for a moment, like Houard, that these instruments in Marculfus were not records of real transactions, but general forms for future occasion.

The office of patrician is rather more obscure. It seems to have nearly corresponded with what was afterward called mayor of the palace, and to have implied the command of all the royal forces. Such at least were Celsus, and his successor Mummolus, under Gontran. This is probable too from analogy. The patrician was the highest officer in the Roman empire, from the time of Constantine, and we know how much the Franks themselves, and still more their Gaulish subjects, affected to imitate the style of the imperial court.

* That the offices of count and duke were originally but temporary, may be inferred from several passages in Gregory of Tours; as l. v., c. 37; l. viii., c. 18. But it seems by the laws of the Alemanni, c. 35, that the hereditary succession of their dukes was tolerably established at the beginning of the seventh century, when their code was promulgated. The Bavarians chose their own dukes out of one family, as is declared in their laws; tit. ii., c. 1 and c. 20.—(Lindebrog, Codex Legum antiquarum.) This the Emperor Henry II. confirms in Ditmar; Nonne scitis (he says), Bajuarios ab initio ducem eligendi liberam habere potestatem?—(Schmidt, Hist. des Allemands, t. ii., p. 404.) Indeed, the consent of these German provincial nations, if I may use the expression, seems to have been always required, as in an independent monarchy. Ditmar, a chronicler of the tenth century, says, that Eckard was made Duke of Thuringia totius populi consensu.—Pfeffel, Abrégé Chronologique, t. i., p. 184. With respect to France properly so called, or the kingdoms of Neustria and Burgundy, it may be less easy to prove the existence of hereditary offices under the Merovingians. But the feebleness of their government makes it probable that so natural a symptom of disorganization had not failed to ensue. The Helvetian counts appear to have been nearly independent, as early as this period.—(Planta's Hist. of the Helvetic Confederacy, chap i.)

† Giannone, l. iv.

of constitutional laws rigidly observed in ages of anarchy and ignorance. Those antiquaries who have maintained the most opposite theories upon such points are seldom in want of particular instances to support their respective conclusions.*

Limited authority of Clovis.

Clovis was a leader of barbarians, who respected his valour, and the rank which they had given him, but were incapable of servile feelings, and jealous of their common as well as individual rights. In order to appreciate the power which he possessed, we have only to look at the well-known story of the vase of Soissons. When the plunder taken in Clovis's invasion of Gaul was set out in this place for distribution, he begged for himself a precious vessel, belonging to the church of Rheims. The army having expressed their willingness to consent, "You shall have nothing here," exclaimed a soldier, striking it with his battle-axe, "but what falls to your share by lot." Clovis took the vessel, without marking any resentment; but found an opportunity, next year, of revenging himself by the death of the soldier. It is impossible to resist the inference which is supplied by this story. The whole behaviour of Clovis is that of a barbarian chief, not daring to withdraw any thing from the rapacity, or to chastise the rudeness, of his followers.

Vase of Soissons.

Power of the kings increases.

But if such was the liberty of the Franks when they first became conquerors of Gaul, we have good reason to believe that they did not long preserve it. A people not very numerous spread over the spacious provinces of Gaul, wherever lands were assigned to, or seized by them.† It became a burden to attend those general assemblies of the nation, which were annually convened in the month of March, to deliberate upon public business, as well as to exhibit a muster of military strength. After some time, it appears that these meetings drew together only the bishops, and those invested with civil offices.* The ancient inhabitants of Gaul, having little notion of political liberty, were unlikely to resist the most tyrannical conduct. Many of them became officers of state and advisers of the sovereign, whose ingenuity might teach maxims of despotism unknown in the forests of Germany. We shall scarcely wrong the bishops by suspecting them of more pliable courtliness than was natural to the long-haired warriors of Clovis.† Yet it is probable that some of the Franks were themselves instrumental in this change of their government. The court of the Merovingian kings was crowded with followers, who have been plausibly derived from those of the German chiefs described by Tacitus; men, forming a distinct and elevated class in the state, and known by the titles of Fideles, Leudes, and Antrustiones. They took an oath of fidelity to the king upon their admission into that rank, and were commonly remunerated with gifts of land. Under different appellations we find, as some antiquaries think, this class of courtiers in the early records of Lombardy and England. The general name of vassals (from *Gwas*, a Celtic word for a servant) is applied to them in every country.‡ By the assistance of these faithful supporters, it has been thought that the regal authority of Clovis's successors was ensured.§ However this

* Hottoman (Franco-Gallia, c. vi.) and Boulainvilliers (Etat de la France) seem to consider the crown as absolutely elective. The Abbé Vertot (Mémoires de l'Acad. des Inscriptions, t. iv.) maintains a limited right of election within the reigning family. M. de Foncemagne (t. vi. and t. viii. of the same collection) asserts a strict hereditary descent. Neither perhaps sufficiently distinguishes acts of violence from those of right, nor observes the changes in the French constitution between Clovis and Childeric III.

† Du Bos, Hist. Critique, t. ii., p. 301, maintains that Clovis had not more than 3000 or 4000 Franks in his army, for which he produces some, though not very ancient, authorities. The smallness of the number of Salians may account for our finding no mention of the partitions made in their favour. See, however, Du Bos, t. iii., p. 466

* Du Bos, t. iii., p. 327. Mably, Observ. sur l'Histoire de France, l. i., c. 3.

† Gregory of Tours, throughout his history, talks of the royal power in the tone of Louis XIV.'s court. If we were obliged to believe all we read, even the vase of Soissons would bear witness to the obedience of the Franks.

‡ The Gasindi of Italy, and the Anglo-Saxon royal Thane, appear to correspond, more or less, to the Antrustions of France. The word Thane, however, was used in a very extensive sense, and comprehended all free proprietors of land. That of *Leudes* seems to imply only subjection, and is frequently applied to the whole body of a nation, as well as, in a stricter sense, to the king's personal vassals. This name they did not acquire originally by possessing benefices, but rather, by being vassals or servants, became the object of beneficiary donations. In one of Marculfus's precedents, l. i., f. 18, we have the form by which an Antrustion was created. See Du Cange, under these several words, and Muratori's thirteenth dissertation on Italian antiquities. The Gardingi, sometimes mentioned in the laws of the Visigoths, do not appear to be of the same description.

§ Boantus * * * * vallatus in domo suâ, ab hominibus regis interfectus est.—Greg. Tur., l. viii., c. 11. A few spirited retainers were sufficient to execute the mandates of arbitrary power among barbarous, disunited people.

may be, the annals of his more immediate descendants exhibit a course of oppression, not merely displayed, as will often happen among uncivilized people, though free, in acts of private injustice but in such general tyranny as is incompatible with the existence of any real checks upon the sovereign.*

Degeneracy of the royal family. Mayors of the palace.

But before the middle of the seventh century, the kings of this line had fallen into that contemptible state which has been described in the last chapter. The mayors of the palace, who, from mere officers of the court, had now become masters of the kingdom, were elected by the Franks, not indeed the whole body of that nation, but the provincial governors, and considerable proprietors of land.† Some inequality there probably existed from the beginning in the partition of estates, and this had been greatly increased by the common changes of property, by the rapine of those savage times, and by royal munificence. Thus arose that landed aristocracy, which became the most striking feature in the political system of Europe during many centuries, and is in fact its great distinction, both from the despotism of Asia, and the equality of republican governments.

Nobility

There has been some dispute about the origin of nobility in France, which might perhaps be settled, or at least better understood, by fixing our conception of the term. In our modern acceptation, it is usually taken to imply certain distinctive privileges in the political order, inherent in the blood of the possessor, and consequently not transferable like those which property confers. Limited to this sense, nobility, I conceive, was unknown to the conquerors of Gaul till long after the downfall of the Roman empire. They felt, no doubt, the common prejudice of mankind in favour of those whose ancestry is conspicuous, when compared with persons of obscure birth. This is the primary meaning of nobility, and perfectly distinguishable from the possession of exclusive civil rights. Those who are acquainted with the constitution of the Roman republic, will recollect an instance of the difference between these two species of hereditary distinction, in the *patricii* and the *nobiles*. Though I do not think that the tribes of German origin paid so much regard to genealogy as some Scandinavian and Celtic nations (else the beginnings of the greatest houses would not have been so envelop ed in doubt as we find them), there are abundant traces of the respect in which families of known antiquity were held among them.*

But the essential distinction of ranks in France, perhaps also in Spain and Lombardy, was founded upon the possession of land, or upon civil employment. The aristocracy of wealth preceded that of

* The proofs of this may be found in almost every page of Gregory: among other places, see l. iv., c. 1; l. vi., c. 29; l. ix., c. 30. In all edicts proceeding from the first kings, they are careful to express the consent of their subjects. Clovis's language runs—Populus noster petit. His son Childebert expresses himself: unà cum nostris optimatibus pertractavimus—convenit unà cum leudis nostris. But in the famous treaty of Andeley, A. D. 587, no national assent seems to have been asked or given to its provisions, which were very important. And an edict of one of the Clotaires (it is uncertain whether the first or second of that name, though Montesquieu has given good reasons for the latter) assumes a more magisterial tone, without any mention of the Leudes.

† The revolution which ruined Brunehaut was brought about by the defection of her chief nobles, especially Warnachar, mayor of Austrasia. Upon Clotaire II.'s victory over her, he was compelled to reward these adherents at the expense of the monarchy. Warnachar was made mayor of Burgundy, with an oath from the king never to dispossess him. —(Fredegarius, c. 42.) In 626, the nobility of Burgundy declined to elect a mayor, which seems to have been considered as their right. From this time nothing was done without the consent of the aristocracy. Unless we ascribe all to the different ways of thinking in Gregory and Fredegarius, the one a Roman bishop, the other a Frank or Burgundian, the government was altogether changed.

It might even be surmised, that the crown was considered as more elective than before. The author of Gesta Regum Francorum, an old chronicler who lived in those times, changes his form of expressing a king's accession from that of Clotaire II. Of the earlier kings he says only, regnum recepit. But of Clotaire, Franci quoque prædictum Clotairium regem parvulum supra se in regnum statuerunt. Again, of the accession of Dagobert I.: Austrasii Franci superiores congregati in unum, Dagobertum supra se in regnum statuunt. In another place, Decedente præfato rege Clodoveo, Franci Clotairium seniorem puerum ex tribus sibi regem statuerunt. Several other instances might be quoted

* The antiquity of French nobility is maintained temperately by Schmidt, Hist. des Allemands, t. i., p. 361, and with acrimony by Montesquieu, Esprit des Loix, l. xxx., c. 25. Neither of them proves any more than I have admitted. The expression of Ludovicus Pius to his freedman, Rex fecit te liberum, non nobilem: quod impossibile est post libertatem, is very intelligible, without imagining a privileged class. Of the practical regard paid to birth, indeed, there are many proofs. It seems to have been a recommendation in the choice of bishops.—(Marculfi Formulæ, l. i., c. 4, cum notis Bignonii, in Baluzii Capitularibus.) It was probably much considered in conferring dignities. Fredegarius says of Protadius, mayor of the palace to Brunehaut, Quoscunque genere nobiles reperiebat, totos humiliare conabatur, ut nullus reperiretur qu gradum, quem arripuerat, potuisset assumern

birth, which indeed is still chiefly dependant upon the other for its importance. A Frank of large estate was styled a noble; if he wasted or was despoiled of his wealth, his descendants fell into the mass of the people, and the new possessor became noble in his stead. In these early ages, property did not very frequently change hands, and desert the families who had long possessed it. They were noble by descent, therefore, because they were rich by the same means. Wealth gave them power, and power gave them pre-eminence. But no distinction was made by the Salique or Lombard codes in the composition for homicide, the great test of political station, except in favour of the king's vassals. It seems, however, by some of the barbaric codes, those namely of the Burgundians, Visigoths, Saxons, and the English colony of the latter nation,* that the free men were ranged by them into two or three classes, and a difference made in the price at which their lives were valued: so that there certainly existed the elements of aristocratic privileges, if we cannot in strictness admit their completion at so early a period. The Antrustions of the kings of the Franks were also noble, and a composition was paid for their murder treble of that for an ordinary citizen: but this was a personal, not an hereditary distinction. A link was wanting to connect their eminent privileges with their posterity; and this link was to be supplied by hereditary benefices.

Besides the lands distributed among the nation, others were reserved to the crown, partly for the support of its dignity, and partly for the exercise of its munificence. These were called fiscal lands; they were dispersed over different parts of the kingdom, and formed the most regular source of revenue.† But the greater portion of them were granted out to favoured subjects, under the name of benefices, the nature of which is one of the most important points in the policy of these ages.

Fiscal lands.

Benefices were, it is probable, most frequently bestowed upon the professed courtiers, the Antrustiones or Leudes, and upon the provincial governors. It by no means appears that any conditions of military service were expressly annexed to these grants: but it may justly be presumed that such favours were not conferred without an expectation of some return; and we read, both in law and history, that beneficiary tenants were more closely connected with the crown than mere allodial proprietors. Whoever possessed a benefice was bound to serve his sovereign in the field. But of allodial proprietors only the owner of three mansi was called upon for personal service. Where there were three possessors of single mansi, one went to the army, and the others contributed to his equipment.* Such at least were the regulations of Charlemagne, whom I cannot believe, with Mably, to have relaxed the obligations of military attendance. After the peace of Coblentz in 860, Charles the Bald restored all allodial property belonging to his subjects who had taken part against him, but not his own beneficiary grants, which they were considered as having forfeited.

Benefices.

Most of those who have written upon the feudal system, lay it down that benefices were originally precarious, and revoked at pleasure by the sovereign; that they were afterward granted for life; and, at a subsequent period, became hereditary. No satisfactory proof, however, appears to have been brought of the first stage in this progress.† At least, I am not convinced.

Their extinction.

* Leg Burgund., tit. 26. Leg. Visigoth., l. ii., t. 2, c. 4 (in Lindebrog). Du Cange, voc. Adalingus, Nobilis. Wilkins, Leg. Ang. Sax., passim. I think it cannot be denied that nobility, founded either upon birth or property, and distinguished from mere personal freedom, entered into the Anglo-Saxon system. Thus the *eorl* and *ceorl* are opposed to each other, like the noble and roturier in France.

† The demesne lands of the crown are continually mentioned in the early writers; the kings, in journeying to different parts of their dominions, took up their abode in them. Charlemagne is very full in his directions as to their management.—Capitularia, A. D. 797, et alibi.

* Capitul. Car. Mag., ann. 807 and 812. I cannot define the precise area of a mansus. It consisted, according to Du Cange, of twelve jugera: but what he meant by a juger I know not. The ancient Roman juger was about five eighths of an acre; the Parisian arpent was a fourth more than one. This would make a difference as two to one.

† The position which I have taken upon me to controvert, is laid down in almost every writer on the feudal system. Besides Sir James Craig, Spelman, and other older authors, Houard, in his Anciennes Loix des François, t. i., p. 5, and the editors of the Benedictine Collection, t. xi., p. 163, take the same point for granted. Mably, Observations sur l'Histoire de France, l. i, c. 3, calls it, une vérité que M. de Montesquieu a très bien prouvée. And Robertson affirms with unusual positiveness, "These benefices were granted originally only during pleasure. No circumstance relating to the customs of the middle ages is better ascertained than this: and innumerable proofs of it might be added to those produced in L'Esprit des Loix, and by Du Cange."—Hist. Charles V., vol. i., not. 8.

These testimonies, which Robertson has not chosen to bring forward, we cannot conjecture: nor is it easy to comprehend by what felicity he

hat beneficiary grants were ever considered as resumable at pleasure, unless where some delinquency could be imputed to the vassal. It is possible, though I am not aware of any documents which prove it, that benefices may, in some instances, have been granted for a term of years, since even fiefs, in much later times, were occasionally of no greater extent. Their ordinary duration, however, was at least the life of the possessor, after which they reverted to the fisc.* Nor can I agree with those who deny the existence of hereditary benefices under the first race of French kings The codes of the Burgundians and of the Visigoths, which advert to them, are, by analogy, witnesses to the contrary.† The precedents given in the forms of Marculfus (about 660) for the grant of a benefice, contain very full terms, extending it to the heirs of the beneficiary.‡ And Mably has plausibly inferred the perpetuity of benefices, at least in some instan

has discovered, in the penury of historical records during the sixth and seventh centuries, innumerable proofs of a usage which, by the confession of all, did not exist at any later period. But as the authorities quoted by Montesquieu have appeared conclusive both to Mably and Robertson, it may be proper to examine them separately. The following is the passage in the L'Esprit des Loix on which they rely.

On ne peut pas douter que d'abord les fiefs ne fussent amovibles. On voit, dans Grégoire de Tours, que l'on ôte à Sunégisile et à Galloman tout ce qu'ils tenoient du fisc, et qu'on ne leur laisse que ce qu'ils avoient en propriété. Gontran, élevant au trône son neveu Childebert, eut une conférence secrette avec lui, et lui indiqua ceux à qui il devoit donner des fiefs, et ceux à qui il devoit les ôter. Dans une formule de Marculfe, le roi donne en échange, non seulement des bénéfices que son fisc tenoit, mais encore ceux qu'un autre avoit tenus. La loi des Lombards oppose les bénéfices à la propriété. Les historiens, les formules, les codes des différens peuples barbares, tous les monumens qui nous restent, sont unanimes. Enfin, ceux qui ont écrit le Livre des Fiefs, nous apprennent que d'abord les seigneurs purent les ôter à leur volonté, qu'ensuite ils les assurèrent pour un an, et après les donnèrent pour toujours, l. xxx., c. 16.

The first of Montesquieu's authorities is from Gregory of Tours, l. ix., c. 38. Sunegisilus and Gallomagnus, two courtiers of Childebert, having been accused of a treasonable conspiracy, fled to sanctuary, and refused to stand their trial. Their beneficiary lands were upon this very justly taken away by a judicial sentence. What argument can be drawn from a case of forfeiture for treason or outlawry, that benefices were granted only during pleasure? 2. Gontran is said by Gregory to have advised his nephew Childebert, quos honoraret muneribus, quos ab honore depelleret, l. vii., 33. But *honour* is more commonly used in the earliest writers for an office of dignity than for a landed estate; and even were the word to bear in this place the latter meaning, we could not fairly depend on an authority, drawn from times of peculiar tyranny and civil convulsion. I am not contending that men were secure in their beneficiary, since they certainly were not so in their allodial estates: the sole question is as to the right they were supposed to possess in respect of them. 3. In the precedent of Marculfus, quoted by Montesquieu, the king is supposed to grant lands which some other person had lately held. But this is meant as a designation of the premises, and would be perfectly applicable, though the late possessor were dead. 4. It is certainly true that the Lombard laws (that is, laws enacted by the successors of Charlemagne in Lombardy), and the general tenour of ancient records, with a few exceptions, oppose benefices to propriety: but it does not follow that the former were revocable at leasure. This opposition of allodial to feudal estates subsists at present, though the tenure of the latter is any thing rather than precarious 5. As to the Libri Feudorum, which are a compilation by some Milanese lawyers in the twelfth century, they cannot be deemed of much authority for the earlier history of the feudal system in France. There is certainly reason to think, that even in the eleventh century, the tenure of fiefs in some parts of Lombardy was rather precarious; but whether this were by any other law than that of the stronger, it would be hard to determine.

Du Cange, to whom Robertson also refers, gives this definition of a benefice; prædium fiscale, quod a rege vel principe, vel ab alio quolibet *ad vitam* viro nobili utendum conceditur. In a subsequent place, indeed, he says: nec tantum erant ad vitam, sed pro libitu auferebantur. For this he only cites a letter of the bishops to Louis the Debonair; Ecclesiæ nobis a Deo commissæ non talia sunt beneficia, et hujusmodi regis proprietas, ut pro lib ilu suo inconsultè illas possit dare, aut auferre But how slight a foundation does this afford for the inference that lay benefices were actually liable to be resumed at pleasure! Suppose even this to be a necessary application in the argument of those bishops, is it certain that they stated the law of their country with accuracy? Do we not find greater errors than this every day in men's speech and writings, relative to points with which they are not immediately concerned? In fact, there is no manner of doubt that benefices were granted not only for life, but as inheritances, in the reign of Louis. In the next sentence Du Cange adds a qualification which puts an end to the controversy, so far as his authority is concerned; Non temere tamen, *nec sine legali judicio* auferebantur. That those two sentences contradict each other is manifest; the latter, in my opinion, is the more correct position.

* The following passage from Gregory of Tours seems to prove, that although sons were occasionally permitted to succeed their fathers, an indulgence which easily grew up into a right, the crown had, in his time, an unquestionable reversion after the death of its original beneficiary. Hoc tempore et Wandelinus, nutritor Childeberti regis, obiit; sed in locum ejus nullus est subrogatus, eo quod regina mater curam velit propriam habere de filio *Quæcunque de fisco meruit, fisci juribus sunt relata* Obiit his diebus Bodegesilus dux plenus dierum sed nihil de facultate ejus filiis minutum est, l. viii c. 22. Gregory's work, however, does not go farther than 595.

† Leges Burgundionum, tit i. Leges Wisigoth l. v., tit. 2.

‡ Marculf., form. xii. and xiv., l. i. This precedent was in use down to the eleventh century; its expressions recur in almost every charter. The earliest instance I have seen of an actual grant to a private person, is of Charlemagne to one John in 795.—Baluzii Capitularia, t ii., p. 1400

ces, from the language of the treaty at Andely in 587, and of an edict of Clotaire II. some years later.* We can hardly doubt at least that children would put in a very strong claim to what their father had enjoyed; and the weakness of the crown in the seventh century must have rendered it difficult to reclaim its property.

A natural consequence of hereditary benefices was that those who possessed them carved out portions to be held of themselves by a similar tenure. Abundant proofs of this custom, best known by the name of sub-infeudation, occur even in the capitularies of Pepin and Charlemagne. At a later period it became universal; and what had begun perhaps through ambition or pride, was at last dictated by necessity. In that dissolution of all law which ensued after the death of Charlemagne, the powerful leaders, constantly engaged in domestic warfare, placed their chief dependance upon men whom they attached by gratitude, and bound by strong conditions. The oath of fidelity which they had taken, the homage which they had paid to the sovereign, they exacted from their own vassals. To render military service became the essential obligation which the tenant of a benefice undertook; and out of those ancient grants, now become for the most part hereditary, there grew up in the tenth century, both in name and reality, the system of feudal tenures.†

Sub-infeudation.

This revolution was accompanied by another still more important. The provincial governors, the dukes and counts, to whom we may add the marquises or margraves, intrusted with the custody of the frontiers, had taken the lead in all public measures after the decline of the Merovingian kings. Charlemagne, duly jealous of their ascendency, checked it by suffering the dutchies to expire without renewal, by granting very few counties hereditarily, by removing the administration of justice from the hands of the counts into those of his own itinerant judges, and, if we are not deceived in his policy, by elevating the ecclesiastical order as a counterpoise to that of the nobility. Even in his time, the faults of the counts are the constant theme of the capitularies; their dissipation and neglect of duty, their oppression of the poore proprietors, and their artful attempts to appropriate the crown lands situated within their territory.* If Charlemagne was unable to redress those evils, how much must they have increased under his posterity! That great prince seldom gave more than one county to the same person; and, as they were generally of moderate size, co-extensive with episcopal diocesses, there was less danger of this policy had been followed, of their becoming independent.† But Louis the Debonair, and, in a still greater degree Charles the Bald, allowed several counties to be enjoyed by the same person. The possessors constantly aimed at acquiring private estates within the limits of their charge, and thus both rendered themselves formidable, and assumed a kind of patrimonial right to their dignities. By a capitulary of Charles the Bald, A. D. 877, the succession of a son to the father's county appears to be recognised as a known usage.‡ In the next century there followed an entire prostration of the royal authority, and the counts usurped their governments as little sovereignties, with the domains and all regalian rights, subject only to the feudal superiority of the king.§ They now added

Usurpation of provincial governors.

* Quicquid antefati reges ecclesiis aut fidelibus suis contulerunt, aut adhuc conferre cum justitiâ Deo propitiante voluerint, stabiliter conservetur; et quicquid unicuique fidelium in utriusque regno per legem et justitiam redhibetur, nullum ei præjudicium ponatur, sed liceat res debitas possidere atque recipere. Et si aliquid unicuique per interregna sine culpâ sublatum est, audientiâ habitâ restauretur. Et de eo quod per munificentias præcedentium regum unusquisque usque ad transitum gloriosæ memoriæ domini Chlothacharii regis possedit, cum securitate possideat; et quod exinde fidelibus personis ablatum est, de præsenti recipiat. Fœdus Andeliacum, in Gregor. Turon., l. ix., c. 20.

Quæcunque ecclesiæ vel clericis vel quibuslibet personis a gloriosæ memoriæ præfatis principibus munificentiæ largitate collatæ sunt, omni firmitate perdurent.—Edict Chlotachar. I. vel potius II. in Recueil des Historiens, t. iv., p. 116.

† Somner says, that he has not found the word feudum anterior to the year 1000; and Muratori, a still greater authority, doubts whether it was used so early. I have, however, observed the words feum and fevum, which are manifestly corruptions of feudum, in several charters about 960.—Vaissette, Hist. de Languedoc, t. ii., Appendix, p. 107, 128, et alibi. Some of these fiefs appear not to have been hereditary. But, independently of positive instances, can it be doubted that some word of barbarous original must have answered, in the vernacular languages, to the Latin beneficium? See Du Cange v. Feudum.

* Capitularia Car. Mag. et Lud. Pii., passim. Schmidt, Hist. des Allemands, t. ii., p. 458. Gaillard, Vie de Charlem., t. iii., p. 118.

† Vaissette, Hist. de Languedoc, t. i., p. 587, 700, and not. 87.

‡ Baluzii Capitularia, t. ii., p. 270 and 269. This is a questionable point, and most French antiquaries consider this famous capitulary as the foundation of an hereditary right in counties. I am inclined to think that there was at least a practice of succession, which is implied and guarantied by this provision.

§ It appears, by the record of a division in 918

the name of the county to their own, and their wives took the appellation of countess.* In Italy, the independence of the dukes was still more complete; and although Otho the Great and his descendants kept a stricter rein over those of Germany, yet we find the great fiefs of their empire, throughout the tenth century, granted almost invariably to the male and even female heirs of the last possessor.

Change of allodial into feudal tenures.

Meanwhile, the allodial proprietors, who had hitherto formed the strength of the state, fell into a much worse condition. They were exposed to the rapacity of the counts, who, whether as magistrates and governors, or as overbearing lords, had it always in their power to harass them. Every district was exposed to continual hostilities; sometimes from a foreign enemy, more often from the owners of castles and fastnesses, which in the tenth century, under pretence of resisting the Normans and Hungarians, served the purposes of private war. Against such a system of rapine, the military compact of lord and vassal was the only effectual shield; its essence was the reciprocity of service and protection. But an insulated allodialist had no support: his fortunes were strangely changed, since he claimed, at least in right, a share in the legislation of his country, and could compare with pride his patrimonial fields with the temporary benefices of the crown. Without law to redress his injuries, without the royal power to support his right, he had no course left but to compromise with oppression, and subject himself, in return for protection, to a feudal lord. During the tenth and eleventh centuries it appears that allodial lands in France had chiefly become feudal: that is, they had been surrendered by their proprietors, and received back again upon the feudal conditions; or, more frequently, perhaps, the owner had been compelled to acknowledge himself the *man* or vassal of a suzerain, and thus to confess an original grant which had never existed.† Changes of the same nature, though not perhaps so extensive, or so distinctly to be traced, took place in Italy and Germany. Yet it would be inaccurate to assert that the prevalence of the feudal system has been unlimited; in a great part of France, allodial tenures always subsisted; and many estates in the empire were of the same description.*

Custom of personal commendation.

There are, however, vestiges of a very universal custom distinguishable from the feudal tenure of land, though so analogous to it, that it seems to have nearly escaped the notice of antiquaries. From this silence of other writers, and the great obscurity of the subject, I am almost afraid to notice, what several passages in ancient laws and instruments concur to prove, that, besides the relation established between lord and vassal by beneficiary grants, there was another species more personal, and more closely resembling that of patron and client in the Roman republic. This was usually called *commendation;* and appears to have been founded on two very general principles, both of which the distracted state of society inculcated. The weak needed the protection of the powerful; and the government needed some security for public order. Even before the invasion of the Franks, Salvian, a writer of the fifth century, mentions the custom of obtaining

that the counts of Toulouse had already so far usurped the rights of their sovereign, as to claim an estate on the ground of its being a royal benefice.—Hist. de Languedoc, t. ii., Appen., p. 56.

* Vaissette, Hist. de Languedoc, t. i., p. 588, and infrà, t. ii., p. 38, 109, and Appendix, p. 56.

† Hist. de Languedoc, t. ii., p. 109. It must be confessed, that there do not occur so many specific instances of this conversion of allodial tenure into feudal, as might be expected, in order to warrant the supposition in the text. Several records, however, are quoted by Robertson. Hist. Charles V., note 8; and others may be found in diplomatic collections. A precedent for surrendering allodial property to the king, and receiving it back as his benefice, appears even in Marculfus. l. i., form. 13. The county of Cominges, between the Pyrenees, Toulouse, and Bigorre, was allodial till 1244, when it was put under the feudal protection of the Count of Toulouse. It devolved by escheat to the crown in 1443.—Villaret, t. xv., p. 346.

In many early charters, the king confirms the possession even of allodial property, for greater security in lawless times; and, on the other hand, in those of the tenth and eleventh centuries, the word allodium is continually used for a feud, or hereditary benefice, which renders this subject still more obscure.

* The maxim, Nulle terre sans seigneur, was so far from being universally received in France, that in almost all southern provinces, or pays du droit écrit, lands were presumed to be allodial, unless the contrary was shown, or, as it was called, franc-aleux sans titre. The parliaments, however, seem latterly to have inclined against this presumption, and have thrown the burden of proof on the party claiming allodiality. For this see Denisart, Dictionnaire des Décisions, art. Franc-aleu. And the famous maxim of the Chancellor Dupral, nulle terre sans seigneur, was true, as I learn from the dictionary of Houard, with respect to jurisdiction, though false as to tenure; allodial lands insulated (enclavés) within the fief of a lord, being subject to his territorial justice.—Dict. de Houard, art. Aleu.

In Germany, according to Du Cange, voc. Baro, there is a distinction between Barones and Semper-Barones; the latter holding their lands allodially

the protection of the great by money, and blames their rapacity, though he allows the natural reasonableness of the practice.* The disadvantageous condition of the less powerful freemen, which ended in the servitude of one part, and in the feudal vassalage of another, led such as fortunately still preserved their allodial property to ensure its defence by a stipulated payment of money. Such payments, called Salvamenta, may be traced in extant charters, chiefly indeed of monasteries.† In the case of private persons, it may be presumed that this voluntary contract was frequently changed by the stronger party into a perfect feudal dependance. From this, however, as I imagine, it properly differed in being capable of dissolution at the inferior's pleasure, without incurring a forfeiture, as well as in having no relation to land. Homage, however, seems to have been incident to commendation, as well as to vassalage. Military service was sometimes the condition of this engagement. It was the law of France, so late at least as the commencement of the third race of kings, that no man could take a part in private wars except in defence of his own lord. This we learn from an historian about the end of the tenth century, who relates that one Erminfrid, having been released from his homage to Count Burchard, on ceding the fief he had held of him to a monastery, renewed the ceremony on a war breaking out between Burchard and another nobleman, wherein he was desirous to give assistance; since, the author observes, it is not, nor has been the practice in France, for any man to be concerned in war, except in the presence or by the command of his lord.‡ Indeed, there is reason to infer, from the capitularies of Charles the Bald, that every man was bound to attach himself to some lord, though it was the privilege of a freeman to choose his own superior.§ And this is strongly supported by the analogy of our Anglo-Saxon laws, where it is frequently repeated, that no man should continue without a lord. There are, too, as it seems to me, a great number of passages in Domesday-book which confirm this distinction between personal commendation and the beneficiary tenure of land. Perhaps I may be thought to dwell too prolixly on this obscure custom; but as it tends to illustrate those mutual relations of lord and vassal which supplied the place of regular government in the polity of Europe, and has seldom or never been explicitly noticed, its introduction seemed not improper.

It has been sometimes said that feuds were first rendered hereditary in Germany by Conrad II., surnamed the Salic. This opinion is perhaps erroneous. But there is a famous edict of that emperor at Milan, in the year 1037, which, though immediately relating only to Lombardy, marks the full maturity of the system, and the last stage of its progress.* I have remarked already the custom of sub-infeudation, or grants of lands by vassals to be held of themselves, which had grown up with the growth of these tenures. There had occurred, however, some disagreement, for want of settled usage, between these inferior vassals and their immediate lords, which this edict was expressly designed to remove. Four regulations of great importance are established therein; that no man should be deprived of his fief, whether held of the emperor or a mesne lord, but by the laws of the empire, and the judgment of his peers;† that from

Edict of Conrad the Salic

* Du Cange, v. Salvamentum.

† Id., Ibid.

‡ Recueil des Historiens, t. x., p. 355.

§ Unusquisque liber homo, post mortem domini sui, licentiam habeat se commendandi inter hæc tria regna ad quemcunque voluerit. Similiter et ille qui nondum alicui commendatus est.—Baluzii Capitularia, tome i., p. 443. A. D. 806. Volumus etiam ut unusquisque liber homo in nostro regno seniorem qualem voluerit in nobis et in nostris fidelibus recipiat.—Capit. Car. Calvi. A. D. 877. Et volumus ut cujuscunque nostrum homo, in cujuscunque regno sit, cum seniore suo in hostem, vel, aliis suis utilitatibus pergat.—Ibid. See too Baluze, t. i., p. 536, 537.

By the Establishments of St. Louis, c. 87, every stranger coming to settle within a barony was to acknowledge the baron as lord within a year and a day, or pay a fine. In some places, he even became the serf or villein of the lord.—Ordonnances des Rois, p. 187. Upon this jealousy of unknown settlers, which pervades the policy of the middle ages, was founded the droit d'aubaine, or right to their moveables after their decease.—See preface to Ordonnances des Rois, t. i., p. 15.

The article Commendatio, in Du Cange's Glossary, furnishes some hints upon this subject, which however that author does not seem to have fully apprehended. Carpentier, in his Supplement to the Glossary, under the word Vassaticum, gives the clearest notice of it that I have anywhere found. Since writing the above note, I have found the subject touched by M. de Montlosier, Hist. de la Monarchie Française, t. i., p. 854.

* Spelman tells us, in his Treatise of Feuds, chap. ii., that Conradus Salicus, *a French emperor, but of German descent* [what can this mean?], went to Rome about 915 to fetch his crown from Pope John X., when, according to him, the succession of a son to his father's fief was first conceded. An almost unparalleled blunder in so learned a writer! Conrad the Salic was elected at Worms in 1024, crowned at Rome by John XIX. in 1027, and made this edict at Milan in 1037.

† Nisi secundùm constitutionem antecessorum

such judgment an immediate vassal might appeal to his sovereign; that fiefs should be inherited by sons and their children; or, in their failure, by brothers, provided they were *feuda paterna*, such as had descended from the father;* and that the lord should not alienate the fief of his vassal without his consent.†

Such was the progress of these feudal tenures, which determined the political character of every European monarchy where they prevailed, as well as formed the foundations of its jurisprudence. It is certainly inaccurate to refer this system, as is frequently done, to the destruction of the Roman empire by the northern nations, though in the beneficiary grants of those conquerors we trace its beginning. Five centuries, however, elapsed before the allodial tenures, which had been incomparably the more general, gave way, and before the reciprocal contract of the feud attained its maturity. It is now time to describe the legal qualities and effects of this relation, so far only as may be requisite to understand its influence upon the political system.

Principles of a feudal relation.

The essential principle of a fief was a mutual contract of support and fidelity. Whatever obligations it laid upon the vassal of service to his lord, corresponding duties of protection were imposed by it on the lord towards his vassal.‡ If these were transgressed on either side, the one forfeited his land, the other his seigniory, or rights over it. Nor were motives of interest left alone to operate in securing the feudal connexion. The associations founded upon ancient custom and friendly attachment, the impulses of gratitude and honour, the dread of infamy, the sanctions of religion, were all employed to strengthen these ties, and to render them equally powerful with the relations of nature, and far more so than those of political society. It is a question agitated among the feudal lawyers, whether a vassal is bound to follow the standard of his lord against his own kindred.* It was one more important whether he must do so against the king In the works of those who wrote when the feudal system was declining, or who were anxious to maintain the royal authority, this is commonly decided in the negative. Littleton gives a form of homage, with a reservation of the allegiance due to the sovereign;† and the same prevailed in Normandy and some other countries.‡ A law of Frederick Barbarossa enjoins, that in every oath of fealty to an inferior lord, the vassal's duty to the emperor should be expressly reserved But it was not so during the height of the feudal system in France. The vassals of Henry II. and Richard I. never hesitated to adhere to them against the sovereign, nor do they appear to have incurred any blame on that account. Even so late as the age of St. Louis, it is laid down in his establishments, that if justice is refused by the king to one of his vassals, he might summon his own tenants, under penalty of forfeiting their fiefs, to assist him in obtaining redress by arms.§

nostrorum, et judicium parium suorum; the very expressions of Magna Charta.

* "Gerardus noteth," says Sir H. Spelman, "that this law settled not the feud upon the eldest son, or any other son of the feudatory particularly; but left it in the lord's election to please himself with which he would." But the phrase of the edict runs, filios ejus beneficium tenere: which, when nothing more is said, can only mean a partition among the sons.

† The last provision may seem strange, at so advanced a period of the system; yet, according to Giannone, feuds were still revocable by the lord in some parts of Lombardy.—Istoria di Napoli, l. xiii, c. 3. It seems, however, no more than had been already enacted by the first clause of this edict. Another interpretation is possible; namely, that the lord should not alienate his own seignory without his vassal's consent, which was agreeable to the feudal tenures. This indeed would be putting rather a forced construction on the words, ne domino feudum militis alienare liceat.

‡ Crag., Jus Feudale, l. ii., tit. 11. Beaumanoir, Coutumes de Beauvoisis, c. lxi., p. 311. Ass. de Jérus., c. 217 Lib. Feud., l. ii., tit. 26, 47.

Upon the mutual obligation of the lord towards his vassal seems to be founded the law of warranty, which compelled him to make indemnification where the tenant was evicted of his land. This obligation, however unreasonable it may appear to us extended, according to the feudal lawyers, to cases of mere donation.—Crag., l. ii., tit. 4. Butler's Notes on Co. Litt., p. 365.

* Crag., l. ii., tit. 4. † Sect. lxxxv.

‡ Houard, Anc. Loix des François, p. 114. See too an instance of this reservation in Recueil des Historiens, t. xi., 447.

§ Si le Sire dit a son homme lige; Venez vous en avec moi, je veux guerroyer mon Seigneur, qui me denie le jugement de sa cour, le vassal doit repondre: j'irai scavoir, s'il est ainsi que vous me dites. Alors il doit aller trouver le supérieur, et luy dire: Sire, le gentilhomme de qui je tiens mon fief, se plaint que vous lui refusez justice; je viens pour en scavoir la vérité; car je suis semoncé de marcher en guerre contre vous. Si la reponse est que volontiers il fera droit en sa cour, l'homme n'est point obligé de déferer à la requisition du Sire; mais il doit, ou le suivre, ou se resoudre a perdre son fief, si le chef Seigneur persiste dans son refus.—Etablissemens de St. Louis, c. 49. I have copied this from Velly, t. vi., p. 212, who has modernized the orthography, which is almost unintelligible in the Ordonnances des Rois. One MS. gives the reading *Roi* instead of *Seigneur*. And the law certainly applies to the king *exclusively*; for, in case of denial of justice by a mesne lord, there was an appeal to the king's court, but from his injury there could be no appeal but to the sword.

The Count of Britany, Pierre de Dreux, had practically asserted this feudal right during the minority of St. Louis. In a public instrument he announced to the world that, having met with repeated injuries from the regent, and denial of justice, he had let the king know that he no longer considered himself as his vassal, but renounced his homage and defied him.*

The ceremonies used in conferring a fief were principally three: homage, fealty, and investiture. 1. The first was designed as a significant expression of the submission and devotedness of the vassal towards his lord. In performing homage, his head was uncovered, his belt ungirt, his sword and spurs removed; he placed his hands, kneeling, between those of the lord, and promised to become his man from thenceforward; to serve him with life and limb and worldly honour, faithfully and loyally, in consideration of the lands which he held under him. None but the lord in person could accept homage, which was commonly concluded by a kiss.† 2. An oath of fealty was indispensable in every fief; but the ceremony was less peculiar than that of homage, and it might be received by proxy. It was taken by ecclesiastics, but not by minors; and in language differed little from the form of homage.‡ 3. Investiture, or the actual conveyance of feudal lands, was of two kinds; proper and improper. The first was an actual putting in possession upon the ground, either by the lord or his deputy; which is called, in our law, livery of seisin. The second was symbolical, and consisted in the delivery of a turf, a stone, a wand, a branch, or whatever else might have been made usual by the caprice of local custom. Du Cange enumerates not less than ninety-eight varieties of investitures.*

Ceremonies of, 1. Homage. 2. Fealty. 3. Investiture.

Upon investiture, the duties of the vassal commenced. These it is impossible to define or enumerate; because the services of military tenure, which is chiefly to be considered, were in their nature uncertain, and distinguished as such from those incident to feuds of an inferior description. It was a breach of faith to divulge the lord's counsel, to conceal from him the machinations of others, to injure his person or fortune, or to violate the sanctity of his roof and the honour of his family.† In battle he was bound to lend his horse to his lord when dismounted; to adhere to his side while fighting; and to go into captivity, as a hostage for him, when taken. His

Obligations of a vassal.

* Du Cange, Observations sur Joinville, in Collection des Mémoires, t. i., p. 196. It was always necessary for a vassal to renounce his homage before he made war on his lord, if he would avoid the shame and penalty of feudal treason. After a reconciliation, the homage was renewed. And in this no distinction was made between the king and another superior. Thus Henry II. did homage to the King of France in 1188, having renounced his former obligation to him at the commencement of the preceding war.—Matt. Paris, p. 126.

† Du Cange, Hominium, and Carpentier's Supplement, id. voc. Littleton, s. 85. Assises de Jérusalem, c. 204. Crag., l. i., tit. 11. Recueil des Historiens, t. ii., préface, p. 174. Homagium per paragium was unaccompanied by any feudal obligation, and distinguished from homagium ligeum, which carried with it an obligation of fidelity. The dukes of Normandy rendered only homage per paragium to the kings of France, and received the like from the dukes of Britany. In liege homage, it was usual to make reservations of allegiance to the king, or any other lord whom the homager had previously acknowledged.

‡ Littl., s. 91. Du Cange, voc. Fidelitas.

* Du Cange, voc. Investitura.

† Assises de Jérusalem, c. 265. Home ne dolt à la feme de son seigneur, ne à sa fille requerre vilainie de son cors, ne à sa sœur *tant com elle est demoiselle en son hostel* I mention this part of feudal duty on account of the light it throws on the statute of treasons, 25 E. III. One of the treasons therein specified is, si omne violast la compaigne le roy, *ou leigné file le roy nient marié* ou la compaigne leigné fitz et heire le roy. Those who, like Sir E. Coke and the modern lawyers in general, explain this provision by the political danger of confusing the royal blood, do not apprehend its spirit. It would be absurd, upon such grounds, to render the violation of the king's eldest daughter treasonable, so long only as she remains unmarried, when, as is obvious, the danger of a spurious issue inheriting could not arise. I consider this provision therefore as entirely founded upon the feudal principles, which make it a breach of faith (that is, in the primary sense of the word, a treason) to sully the honour of the lord in that of the near relations who were immediately protected by residence in his house. If it is asked why this should be restricted by the statute to the person of the eldest daughter, I can only answer that this, which is not more reasonable according to the common political interpretation, is analogous to many feudal customs in our own and other countries, which attribute a sort of superiority in dignity to the eldest daughter.

It may be objected, that in the reign of Edward III. there was little left of the feudal principle in any part of Europe, and least of all in England. But the statute of treasons is a declaration of the ancient law, and comprehends, undoubtedly, what the judges who drew it could find in records now perished, or in legal traditions of remote antiquity. Similar causes of forfeiture are enumerated in the Libri Feudorum, l. i., tit. 5, and l. ii., tit. 24. In the establishments of St. Louis, c. 51, 52, it is said, that a lord seducing his vassal's daughter intrusted to his custody, lost his seigniory; a vassal guilty of the same crime towards the family of his suzerain, forfeited his land. A proof of the tendency which the feudal law had to purify public morals, and to create that sense of indignation and resentment with which we now regard such breaches of honour.

attendance was due to the lord's courts, sometimes to witness, and sometimes to bear a part in, the administration of justice.*

Limitations of military service.

The measure, however, of military service, was generally settled by some usage. Forty days was the usual term, during which the tenant of a knight's fee was bound to be in the field at his own expense.† This was extended by St. Louis to sixty days, except when the charter of infeudation expressed a shorter period. But the length of service diminished with the quantity of land. For half a knight's fee but twenty days were due; for an eighth part but five; and when this was commuted for an escuage, or pecuniary assessment, the same proportion was observed.‡ Men turned of sixty, public magistrates, and, of course, women, were free from personal service, but obliged to send their substitutes. A failure in this primary duty incurred perhaps strictly a forfeiture of the fief. But it was usual for the lord to inflict an amercement, known in England by the name of escuage.* Thus, in Philip III.'s expedition against the Count de Foix, in 1274, barons were assessed for their default of attendance, at a hundred sous a day for the expenses which they had saved, and fifty sous as a fine to the king; bannerets, at twenty sous for expenses, and ten as a fine; knights and squires in the same proportion. But barons and bannerets were bound to pay an additional assessment for every knight and squire of their vassals whom they ought to have brought with them into the field.† The regulations as to place of service were less uniform than those which regard time. In some places, the vassal was not bound to go beyond the lord's territory,‡ or only so far as he might return the same day. Other customs compelled him to follow his chief upon all his expeditions.§ These inconvenient and varying usages betray the origin of the feudal obligations, not founded upon any national policy, but springing from the chaos of anarchy and intestine war, which they were well calculated to perpetuate. For the public defence, their machinery was totally unserviceable, until such changes were wrought as destroyed the character of the fabric.

Independently of the obligations of fealty and service, which the nature of the contract created, other advantages were derived from it by the lord, which have been called feudal incidents; these were, 1. Reliefs. 2. Fines upon alienation. 3. Escheats. 4 Aids; to which may be added, though not generally established, 5. Wardship, and 6. Marriage.

Feudal incidents.

1. Some writers have accounted for reliefs in the following manner. Benefices, whether depending upon the crown or its vassals, were not originally granted by way of absolute inheritance, but renewed from time to time upon the

Reliefs.

* Assises de Jérusalem, c. 222. A vassal, at least in many places, was bound to reside upon his fief, or not to quit it without the lord's consent. —Du Cange, voc. Reseantia, Remanentia. Recueil des Historiens, t. xi., préface, p. 172.

† In the kingdom of Jerusalem, feudal service extended to a year.—Assises de Jérusalem, c. 230. It is obvious that this was founded on the peculiar circumstances of that state. Service of castle-guard, which was common in the north of England, was performed without limitation of time.—Lyttleton's Henry II., vol. ii., p. 184.

‡ Du Cange, voc. Feudum militis; Membrum Loricæ. Stuart's View of Society, p. 382. This division by knights' fees is perfectly familiar in the feudal law of England. But I must confess my inability to adduce decisive evidence of it in that of France, with the usual exception of Normandy. According to the natural principle of fiefs, it might seem that the same personal service would be required from the tenant, whatever were the extent of his land. William the Conqueror, we know, distributed this kingdom into about 60,000 parcels of nearly equal value, from each of which the service of a soldier was due. He may possibly have been the inventor of this politic arrangement. Some rule must, however, have been observed in all countries in fixing the amercement for absence, which could only be equitable if it bore a just proportion to the value of the fief. And the principle of the knight's fee was so convenient and reasonable, that it is likely to have been adopted in imitation of England by other feudal countries. In the roll of Philip III.'s expedition, as will appear by a note immediately below, there are, I think, several presumptive evidences of it; and though this is rather a late authority to establish a feudal principle, yet I have ventured to assume it in the text.

The knight's fee was fixed in England at the annual value of 20*l.* Every estate supposed to be of this value, and entered as such in the rolls of the exchequer, was bound to contribute the service of a soldier, or to pay an escuage to the amount assessed upon knights' fees.

* Littleton, l. ii., c. 3. Wright's Tenures, p. 121.

† Du Chesne, Script. Rerum Gallicarum, t. v., p. 553. Daniel, Histoire de la Milice Françoise, p. 72. The following extracts from the muster-roll of this expedition will illustrate the varieties of feudal obligation. Johannes d'Ormoy debet servitium per quatuor dies. Johannes Malet debet servitium per viginti dies, pro quo servitio misit Richardum Tichet. Guido de Laval debet servitium duorum militum et dimidii. Dominus Sabrandus dictus Chabot dicit quod non debet servitium domino regi, nisi in comitatu Pictaviensi, et ad sumptus regis, tamen venit ad preces regis cum tribus militibus et duodecim scutiferis. Guido de Lusigniaco Dom de Pierac dicit, quod non debet aliquid regi præter homagium.

‡ This was the custom of Beauvoisis.—Beaumanoir, c. 2.

§ Du Cange et Carpentier, voc. Hostis.

death of the possessor, till long custom grew up into right. Hence a sum of money, something between a price and a gratuity, would naturally be offered by the heir on receiving a fresh investiture of the fief; and length of time might as legitimately turn this present into a due of the lord, as it rendered the inheritance of the tenant indefeisible. This is a very specious account of the matter. But those who consider the antiquity to which hereditary benefices may be traced, and the unreserved expressions of those instruments by which they were created, as well as the undoubted fact that a large proportion of fiefs had been absolute allodial inheritances, never really granted by the superior, will perhaps be led rather to look for the origin of reliefs in that rapacity with which the powerful are ever ready to oppress the feeble. When a feudal tenant died, the lord, taking advantage of his own strength and the confusion of the family, would seize the estate into his hands, either by the right of force or under some litigious pretext. Against this violence the heir could in general have no resource but a compromise; and we know how readily acts of successful injustice change their name, and move demurely, like the wolf in the fable, under the clothing of law. Reliefs and other feudal incidents are said to have been established in France* about the latter part of the tenth century, and they certainly appear in the famous edict of Conrad the Salic, in 1037, which recognises the usage of presenting horses and arms to the lord upon a change of tenancy.† But this also subsisted under the name of heriot, in England, as early as the reign of Canute.

A relief was a sum of money (unless where charter or custom introduced a different tribute) due from every one of full age taking a fief by descent. This was in some countries arbitrary, or *ad misericordiam*, and the exactions practised under this pretence, both upon superior and inferior vassals, ranked among the greatest abuses of the feudal policy. Henry I. of England promises in his charter that they shall in future be just and reasonable; but the rate does not appear to have been finally settled, till it was laid down in Magna Charta, at about the fourth of the annual value of the fief. We find also fixed reliefs among the old customs of Normandy and Beauvoisis. By a law of St. Louis, in 1245,* the lord was entitled to enter upon the lands, if the heir could not pay the relief, and possess them for a year. This right existed unconditionally in England under the name of primer seisin, but was confined to the king.†

2. Closely connected with reliefs were the fines paid to the lord upon the alienation of his vassal's feud; and indeed we frequently find them called by the same name. The spirit of feudal tenure established so intimate a connexion between the two parties, that it could be dissolved by neither without requiring the other's consent. If the lord transferred his seigniory, the tenant was to testify his concurrence; and this ceremony was long kept up in England under the name of attornment. The assent of the lord to his vassal's alienation was still more essential, and more difficult to be attained. He had received his fief, it was supposed, for reasons peculiar to himself or to his family; at least, his heart and arm were bound to his superior; and his service was not to be exchanged for that of a stranger, who might be unable or unwilling to render it. A law of Lothaire II. in Italy forbids the alienation of fiefs without the lord's consent.‡ This prohibition is repeated in one of Frederick I., and a similar enactment was made by Roger, king of Sicily.§ By the law of France, the lord was entitled, upon every alienation made by his tenant, either to redeem the fief by paying the purchase-money, or to claim a certain part of the value, by way of fine, upon the change of tenancy.‖ In Eng- Fines upon alienation.

* Ordonnances des Rois de France, t. i., préface, p. 10.

‡ Servato *usu* valvassorum majorum in tradendis armis equisque suis senioribus. This, among other reasons, leads me to doubt the received opinion, that Italian fiefs were not hereditary before the promulgation of this edict

* Ordonnances des Rois, p. 55.

† Du Cange, v. Placitum, Relevium, Sporta. By many customs a relief was due on every change of the lord, as well as of the vassal; but this was not the case in England. Beaumont speaks of reliefs as due only on collateral succession.—Coûtumes de Beauvoisis, c. 27. In Anjou and Maine they were not even due upon succession between brothers.—Ordonnances des Rois, t. i., p. 58. And M. de Pastoret, in his valuable preface to the sixteenth volume of that collection, says it was a rule that the king had nothing upon lineal succession of a fief, whether in the ascending or descending line, but *la bouche et les mains*; i. e. homage and fealty, p. 20.

‡ Lib. Feudorum, l. ii., tit. 9 and 52. This was principally levelled at the practice of alienating feudal property in favour of the church, which was called pro animâ judicare.—Radevicus in Gestis Frederic. I., l. iv., c. 7. Lib. Feud., l. i., tit. 7 16· l. ii., tit. 10.

§ Giannone, l. ii., c. 5.

‖ Du Cange, v. Reaccapitum, Placitum. Rachatum. Pastoret, préface au seizième tome des Ordonnances, p. 20. Houard, Dict. du Droit Normand, art. Fief. Argou, Inst. du Droit Francois l

land, even the practice of sub infeudation, which was more conformable to the law of fiefs and the military genius of the system, but injurious to the suzerains, who lost thereby their escheats and other advantages of seigniory, was checked by Magna Charta,* and forbidden by the statute 18 Edward I., called Quia Emptores, which at the same time gave the liberty of alienating lands, to be holden of the grantor's immediate lord. The tenants of the crown were not included in this act; but that of 1 Edward III., c. 12, enabled them to alienate, upon the payment of a composition into chancery, which was fixed at one third of the annual value of the lands.†

These restraints, placed for the lord's advantage upon the transfer of feudal property, are not to be confounded with those designed for the protection of heirs and preservation of families. Such were the *jus protimeseos*, in the books of the fiefs,‡ and *retrait lignager* of the French law, which gave to the relations of the vender a pre-emption upon the sale of any fief, and a right of subsequent redemption. Such was the positive prohibition of alienating a fief held by descent from the father (feudum paternum), without the consent of the kindred on that line.§ Such, too, were the still more rigorous fetters imposed by the English statute of entails, which precluded all lawful alienation, till, after two centuries, it was overthrown by the fictitious process of a common recovery. Though these partake in some measure of the feudal spirit, and would form an important head in the legal history of that system, it will be sufficient to allude to them in a sketch, which is confined to the development of its political influence.

A custom very similar in effect to subinfeudation, was the tenure by *frérage*, which prevailed in many parts of France. Primogeniture, in that extreme which our common law has established, was unknown, I believe, in every country upon the continent. The customs of France found means to preserve the dignity of families, and the indivisibility of a feudal homage, without exposing the younger sons of a gentleman to absolute beggary or dependance. Baronies indeed were not divided; but the eldest son was bound to make a provision in money, by way of appanage, for the other children, in proportion to his circumstances and their birth.* As to inferior fiefs, in many places, an equal partition was made; in others, the eldest took the chief portion, generally two thirds, and received the homage of his brothers for the remaining part, which they divided. To the lord of whom the fief was held, himself did homage for the whole.† In the early times of the feudal policy, when military service was the great object of the relation between lord and vassal, this, like all other sub-infeudation, was rather advantageous to the former. For, when the homage of a fief was divided, the service was diminished in proportion. Suppose, for example, the obligation of military attendance for an entire manor to have been forty days; if that came to be equally split among two, each would owe but a service of twenty. But if, instead of being homagers to the same suzerain, one tenant held immediately of the other,

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ii., c. ii. In Beaumanoir's age and district at least, sub-infeudation without the lord's license incurred a forfeiture of the land; and his reason extends of course more strongly to alienation.—Coûtumes de Beauvoisis, c. 2. Velly, t. vi., p. 187. But, by the general law of feuds, the former was strictly regular, while the tenant forfeited his land by the latter. Craig mentions this distinction as one for which he is perplexed to account.—Jus Feudale, l. iii., tit. 3, p. 632. It is, however, perfectly intelligible upon the original principles of feudal tenure.

* Dalrymple seems to suppose that the 32d chapter of Magna Charta relates to alienation, and not to sub-infeudation.—Essay on Feudal Property, ed. 1758, p. 83. See Sir E. Coke, 2 Inst., p. 65 and 501; and Wright on Tenures, contrà. Mr. Hargrave observes, that "the history of our law with respect to the powers of alienation, before the statute of Quia emptores terrarum, is very much involved in obscurity."—Notes on Co. Litt., 43, a. In Glanville's time, apparently, a man could only alienate (to hold of himself) rationabilem partem de terrâ suâ, l. vii., c. 1. But this may have been in favour of the kindred, as much as of the lord.—Dalrymple's Essay, ubi supra.

It is probable that Coke is mistaken in supposing that, "at the common law, the tenant might have made a feoffment of the whole tenancy to be holden of the lord."

† 2 Inst., p. 66. Blackstone's Commentaries, vol. ii., c. 5.

‡ Lib. Feud., l. v., t. 13. There were analogies to this jus πρωτιμησεως in the Roman law, and, still more closely, in the constitutions of the later Byzantine emperors.

§ Alienatio feudi paterni non valet etiam domini voluntate, nisi agnatis consentientibus.—Lib. Feud. apud Wright on Tenures, p. 108 and 156.

* Du Cange, v. Apanamentum, Baro. Baronie ne depart mie entre fréres se leur pere ne leur a fait partie; mes li ainsnez doit faire avenant bien fet au puisné, et si doit les filles marier.—Etablis sem. de St. Louis, c. 24.

† This was also the law of Flanders and Hainault.—Martenne, Thesaurus Anecdotor., t. i., p. 1092. The customs as to succession were exceedingly various, as indeed they continued to be until the late generalization of French law.—Recueil des Histor., t. ii., préface, p. 108: Hist. de Langue doc, t. ii., p. 111 and 511. In the former work it is said that primogeniture was introduced by the Normans from Scandinavia

as every feudatory might summon the aid of his own vassals, the superior lord would in fact obtain the service of both. Whatever opposition, therefore, was made to the rights of sub-infeudation or frérage, would indicate a decay in the military character, the living principle of feudal tenure. Accordingly, in the reign of Philip Augustus, when the fabric was beginning to shake, we find a confederate agreement of some principal nobles, sanctioned by the king, to abrogate the mesne tenure of younger brothers, and establish an immediate dependance of each upon the superior lord.* This, however, was not universally adopted, and the original frérage subsisted to the last in some of the customs of France.†

Escheats and forfeits.

3. As fiefs descended but to the posterity of the first taker, or at the utmost to his kindred, they necessarily became sometimes vacant for want of heirs; especially where, as in England, there was no power of devising them by will. In this case, it was obvious that they ought to revert to the lord, from whose property they had been derived. These reversions became more frequent through the forfeitures occasioned by the vassal's delinquency, either towards his superior lord or the state. Various cases are laid down in the Assises de Jérusalem, where the vassal forfeits his land, for a year, for his life, or for ever.‡ But under rapacious kings, such as the Norman line in England, absolute forfeitures came to prevail, and a new doctrine was introduced, the corruption of blood, by which the heir was effectually excluded from deducing his title, at any distant time, through an attainted ancestor.

Aids.

4. Reliefs, fines upon alienation, and escheats, seem to be natural reservations in the lord's bounty to his vassal. He had rights of another class, which principally arose out of fealty and intimate attachment. Such were the aids which he was entitled to call for in certain prescribed circumstances. These depended a great deal upon local custom, and were often extorted unreasonably. Du Cange mentions several as having existed in France; such as an aid for the lord's expedition to the Holy Land, for marrying his sister or eldest son, and for paying a relief to his suzerain on taking possession of his land.§ Of these, the last appears to have been the most usual in England. But this, and other aids occasionally exacted by the lords, were felt as a severe grievance; and by Magna Charta three only are retained; to make the lord's eldest son a knight, to marry his eldest daughter, and to redeem his person from prison. They were restricted to nearly the same description by a law of William I. of Sicily, and by the customs of France.* These feudal aids are deserving of our attention, as the beginnings of taxation, of which for a long time they in a great measure answered the purpose, till the craving necessities and covetous policy of kings substituted for them more durable and onerous burdens.

I might here, perhaps, close the enumeration of feudal incidents, but that the two remaining, wardship and marriage, though only partial customs, were those of our own country, and tend to illustrate the rapacious character of a feudal aristocracy.

Wardship

5. In England, and in Normandy, which either led the way to or adopted all these English institutions, the lord had the wardship of his tenant during minority.† By virtue of this right, he had both the care of his person, and received to his own use the profits of the estate. There is something in this custom very conformable to the feudal spirit; since none was so fit as the lord to train up his vassal to arms; and none could put in so good a claim to enjoy the fief, while the military service for which it had been granted was suspended. This privilege of guardianship seems to have been enjoyed by the lord in some parts of Germany;‡ but in the law of France, the custody of the land was intrusted to the next heir, and that of the person, as in soccage tenures among us, to the nearest kindred of that blood which could not inherit.§ By a gross abuse of this cus

* Ordonnances des Rois, t. i., p. 29.

† Du Cange, Dissert. III. sur Joinville. Beaumanoir, c. 47.

‡ C. 200, 201. § Du Cange, voc. Auxilium.

* Giannone, l. xii., c. 5. Velly, t. vi., p. 200. Ordonnances des Rois, t. i., p. 138; t. xvi., préface.

† Recueil des Historiens, t. xi., préf., p. 162; Argou, Inst. au Droit François, l. i., c. 6; Houard. Anciennes Loix des François, t. i., p. 147.

‡ Schilter, Institutiones Juris Feudalis, p. 85.

§ Du Cange, v. Custodia. Assises de Jérusalem, c. 178; Etablissemens de St. Louis, c. 17; Beaumanoir, c. 15; Argou, l. i., c. 6. The second of these uses nearly the same expression as Sir John Fortescue in accounting for the exclusion of the next heir from guardianship of the person; that mauvaise convoitise li fairoit faire la garde du loup.

I know not any mistake more usual in English writers who have treated of the feudal law, than that of supposing that guardianship in chivalry was a universal custom. A charter of 1198, in Rymer, t. i., p. 105, seems indeed to imply that the incidents of garde noble and of marriage existed in the Isle of Oleron. But Eleanor, by a later instrument, grants that the inhabitants of that island should have the wardship and marriage of their heirs with

tom in England, the right of guardianship in chivalry, or temporary possession of the lands, was assigned over to strangers. This was one of the most vexatious parts of our feudal tenures, and was never perhaps more sorely felt, than in their last stage under the Tudor and Stuart families.

Marriage

6. Another right given to the lord by the Norman and English laws was that of marriage, or of tendering a husband to his female wards, while under age, whom they could not reject without forfeiting the value of the marriage; that is, as much as any one would give to the guardian for such an alliance. This was afterward extended to male wards; and became a very lucrative source of extortion to the crown, as well as to mesne lords. This custom seems to have had the same extent as that of wardships. It is found in the ancient books of Germany, but not of France.* The kings, however, and even inferior lords of that country, required their consent to be solicited for the marriage of their vassals' daughters. Several proofs of this occur in the history, as well as in the laws of France; and the same prerogative existed in Germany, Sicily, and England.† A still more remarkable law prevailed in the kingdom of Jerusalem. The lord might summon any female vassal to accept one of three whom he should propose as her husband. No other condition seems to have been imposed on him in selecting these suiters, than that they should be of equal rank with herself. Neither the maiden's coyness, nor the widow's affliction, neither aversion to the proffered candidates, nor love to one more favoured, seem to have passed as legitimate excuses. One, only one plea, could come from the lady's mouth, who was resolute to hold her land in single blessedness. It was, that she was past sixty years of age; and, after this unwelcome confession, it is justly argued by the author of the law-book which I quote, that the lord could not decently press her into matrimony.* However outrageous such a usage may appear to our ideas, it is to be recollected that the peculiar circumstances of that little state rendered it indispensable to possess in every fief a proper vassal to fulfil the duties of war.

These feudal servitudes distinguish the maturity of the system. No trace of them appears in the capitularies of Charlemagne and his family, nor in the instruments by which benefices were granted. I believe that they did not make part of the regular feudal law before the eleventh, or perhaps the twelfth century, though doubtless partial usages of this kind had grown up antecedently to either of those periods. If I am not mistaken, no allusion occurs to the lucrative rights of seigniory in the Assises de Jérusalem, which are a monument of French usages in the eleventh century. Indeed, that very general commutation of allodial property into tenure, which took place between the middle of the ninth and eleventh centuries, would hardly have been effected, if fiefs had then been liable to such burdens and so much extortion. In half-barbarous ages, the strong are constantly encroaching upon the weak; a truth which, if it needed illustration, might find it in the progress of the feudal system.

Proper and improper feuds.

We have thus far confined our inquiry to fiefs holden on terms of military service; since those are the most ancient and regular, as well as the most consonant to the spirit of the system. They alone were called proper feuds, and all were presumed to be of this description, until the contrary was proved by the charter of investiture. A proper feud was bestowed without

but any interposition, and expressly abrogates all the evil customs that her husband had introduced. —P. 112. From hence I should infer, that Henry II. had endeavoured to impose these feudal burdens (which perhaps were then new even in England) upon his continental dominions. Radulphus de Diceto tells us of a claim made by him to the wardship of Chateauroux in Berry, which could not legally have been subject to that custom.—Twysden X. Scriptores, p. 599. And he set up pretensions to the custody of the dutchy of Britany, after the death of his son Geoffrey. This might perhaps be justified by the law of Normandy, on which Britany depended. But Philip Augustus made a similar claim. In fact, these political assertions of right, prompted by ambition, and supported by force, are bad precedents to establish rules of jurisprudence. Both Philip and Henry were abundantly disposed to realize so convenient a prerogative as that of guardianship in chivalry over the fiefs of their vassals.—Lyttleton's Henry II., vol. iii., p. 441.

* Schilter, ubi supra. Du Cange, voc. Disparagare, seems to admit this feudal right in France: but the passages he quotes do not support it. See also the word Maritagium.

† Ordonnances des Rois, t. i., p. 155; Assises de Jérus., c. 180, and Thaumassière's note. Du Cange, ubi supra. Glanvil., l. vii., c. 12. Giannone, xi., c. 5. Wright on Tenures, p. 94. St. Louis in return declared that he would not marry his own daughter without the consent of his barons. —Joinville, t. ii., p. 140. Henry I. of England had promised the same. The guardian of a female minor was obliged to give security to her lord not to marry her without his consent.—Etablissemens de St Louis, c 63

* Ass. de Jérus., c. 224. I must observe, that Lauriere says this usage prevailed en plusieurs lieux, though he quotes no authority.—Ordonnances des Rois, p. 155.

price, without fixed stipulation, upon a vassal capable of serving personally in the field. But gradually, with the help of a little legal ingenuity, improper fiefs of the most various kinds were introduced, retaining little of the characteristics, and less of the spirit, which distinguished the original tenures. Women, if indeed that were an innovation, were admitted to inherit them;* they were granted for a price, and without reference to military service. The language of the feudal law was applied by a kind of metaphor to almost every transfer of property. Hence, pensions of money, and allowances of provisions, however remote from right notions of a fief, were sometimes granted under that name; and even where land was the subject of the donation, its conditions were often lucrative, often honorary, and sometimes ludicrous.†

Fiefs of office.

There is one extensive species of feudal tenure which may be distinctly noticed. The pride of wealth in the middle ages was principally exhibited in a multitude of dependants. The court of Charlemagne was crowded with officers of every rank, some of the most eminent of whom exercised functions about the royal person which would have been thought fit only for slaves in the palace of Augustus or Antonine. The free-born Franks saw nothing menial in the titles of cup-bearer, steward, marshal, and master of the horse, which are still borne by the noblest families in every country of Europe, and by sovereign princes in the empire. From the court of the king, this favourite piece of magnificence descended to those of the prelates and barons, who surrounded themselves with household officers, called ministerials; a name equally applied to those of a servile and of a liberal description.‡ The latter of these were rewarded with grants of lands, which they held under a feudal tenure by the condition of performing some domestic service to the lord. What was called in our law grand sergeantry, affords an instance of this species of fief.* It is, however, an instance of the noblest kind; but Muratori has given abundance of proofs, that the commonest mechanical arts were carried on in the houses of the great, by persons receiving lands upon those conditions.†

These imperfect feuds, however, belong more properly to the history of law, and are chiefly noticed in the present sketch because they attest the partiality manifested during the middle ages to the name and form of a feudal tenure. In the regular military fief we see the real principle of the system, which might originally have been defined, an alliance of free landholders, arranged in degrees of subordination according to their respective capacities of affording mutual support.

Feudal law-books.

The peculiar and varied attributes of feudal tenures naturally gave rise to a new jurisprudence, regulating territorial rights in those parts of Europe which had adopted the system. For a length of time this rested in traditionary customs, observed in the domains of each prince or lord, without much regard to those of his neighbours. Laws were made occasionally by the emperor in Germany and Italy, which tended to fix the usages of those countries. About the year 1170, Girard and Obertus, two Milanese lawyers, published two books of the law of fiefs, which obtained a great authority, and have been regarded as the groundwork of that jurisprudence.‡ A number of subsequent commentators swelled this code with their glosses and opinions, to enlighten or obscure the judgment of the imperial tribunals. These were chiefly civilians or canonists, who brought to the interpretation of old barbaric customs the principles of a very different school. Hence a manifest change was wrought in the law of feudal tenure, which they assimilated to the usufruct or the emphyteusis of the Roman code; modes of property somewhat analogous in appear-

* Women did not inherit fiefs in the German empire. Whether they were ever excluded from succession in France, I know not; the genius of a military tenure, and the old Teutonic customs, preserved in the Salique-law, seem adverse to their possession of feudal lands; yet the practice, at least from the eleventh century downwards, does not support the theory.

† Crag., Jus Feudale, l. i., tit. 10. Du Cange, voc. Feudum de Camerâ, &c. In the treaty between Henry I. of England and Robert, count of Flanders, A. D. 1101, the king stipulates to pay annually 400 marks of silver, *in feodo*, for the military service of his ally.—Rymer, Fœdera, t. i., p. 2.

‡ Schmidt, Hist. des Allemands, t. iii., p. 92. Du Cange, v. Familia, Ministeriales.

* "This tenure," says Littleton, "is where a man holds his lands or tenements of our sovereign lord the king by such services as he ought to do in his proper person to the king, as to carry the banner of the king, or his lance, or to lead his array, or to be his marshal, or to carry his sword before him at his coronation, or to be his sewer at his coronation, or his carver, or his butler, or to be one of his chamberlains at the receipt of his exchequer, or to do other like services."—Sect. 153.

† Antiq. Ital., Dissert. 11, ad finem.

‡ Giannone, Ist. di Napoli, l. xiii., c. 3. The Libri Feudorum are printed in most editions of the Corpus Juris Civilis

ance, but totally distinct in principle from the legitimate fief. These Lombard lawyers propagated a doctrine, which has been too readily received, that the feudal system originated in their country; and some writers upon jurisprudence, such as Duck and Sir James Craig, incline to give a preponderating authority to their code. But whatever weight it may have possessed within the limits of the empire, a different guide must be followed in the ancient customs of France and England.* These were fresh from the fountain of that curious polity, with which the stream of Roman law had never mingled its waters. In England we know that the Norman system, established between the conquest and the reign of Henry II., was restrained by regular legislation, by paramount courts of justice, and by learned writings, from breaking into discordant local usages, except in a comparatively small number of places, and has become the principal source of our common law. But the independence of the French nobles produced a much greater variety of customs. The whole number collected and reduced to certainty in the sixteenth century amounted to two hundred and eighty-five, or, omitting those inconsiderable for extent or peculiarity, to sixty. The earliest written customary in France is that of Bearn, which is said to have been confirmed by Viscount Gaston IV., in 1088.† Many others were written in the two subsequent ages, of which the customs of Beauvoisis, compiled by Beaumanoir under Philip III., are the most celebrated, and contain a mass of information on the feudal constitution and manners. Under Charles VII., an ordinance was made for the formation of a general code of customary law, by ascertaining for ever in a written collection those of each district: but the work was not completed till the reign of Charles IX. This was what may be called the common law of the *pays coutumiers*, or northern division of France, and the rule of all their tribunals, unless where controlled by royal edicts.

* Giannone explicitly contrasts the French and Lombard laws respecting fiefs. The latter were the foundation of the Libri Feudorum, and formed the common law of Italy. The former were introduced by Roger Guiscard into his dominions, in three books of constitutions, printed in Lindebrog's collection. There were several material differences, which Giannone enumerates, especially the Norman custom of primogeniture.—Ist. di Nap., l. xi., c. 5.

† There are two editions of this curious old code; one at Pau, in 1552, republished with a fresh title-page and permission of Henry IV., in 1602; the other at Lescars, in 1633. These laws, as we read them, are subsequent to a revision made in the middle of the sixteenth century, in which they were more or less corrected. The basis, however, is unquestionably very ancient. We even find the composition for homicide preserved in them, so that murder was not a capital offence in Bearn, though robbery was such.—Rubrica de Homicidis, Art. xxxi See too Rubrica de Pœnis, Art. i. and ii.

PART II.

Analysis of the Feudal System.—Its local extent —View of the different Orders of Society during the Feudal Ages.—Nobility—their Ranks and Privileges.—Clergy.—Freemen. — Serfs or Villeins.—Comparative State of France and Germany.—Privileges enjoyed by the French Vassals.—Right of coining Money—and of private War. — Immunity from Taxation. — Historical View of the Royal Revenue in France.—Methods adopted to augment it by depreciation of the Coin, &c.—Legislative Power—its state under the Merovingian Kings — and Charlemagne. — His Councils.—Suspension of any general Legislative Authority during the prevalence of Feudal Principles.—The King's Council —Means adopted to supply the Want of a National Assembly — Gradual Progress of the King's Legislative Power.—Philip IV. assembles the States General. — Their Powers limited to Taxation. — States under the Sons of Philip IV.—States of 1355 and 1356. — They nearly effect an entire Revolution.—The Crown recovers its Vigour.—States of 1380, under Charles VII.—Subsequent Assemblies under Charles VI. and Charles VII —The Crown becomes more and more absolute —Louis XI.—States of Tours in 1484.—Historical View of Jurisdiction in France.—Its earliest stage under the first Race of Kings, and Charlemagne.—Territorial Jurisdiction. — Feudal Courts of Justice.—Trial by Combat.—Code of St. Louis.—The Territorial Jurisdictions give way. — Progress of the Judicial Power of the Crown. — Parliament of. — Paris. — Peers of France.—Increased Authority of the Parliament. —Registration of Edicts.—Causes of the Decline of Feudal System.—Acquisitions of Domain by the Crown.—Charters of Incorporation granted to Towns. — Their previous Condition. — First Charters in the twelfth Century. — Privileges contained in them.—Military Service of Feuda Tenants commuted for Money.—Hired Troops —Change in the Military System of Europe.— General View of the Advantages and Disadvantages attending the Feudal System.

Analogies to the feudal tenure.

It has been very common to seek for the origin of feuds, or, at least, for analogies to them, in the history of various countries. But, though it is of great importance to trace the similarity of customs in different parts of the world, because it guides us to the discovery of general theorems as to human society, yet we should be on our guard against seeming analogies which vanish away when they are closely observed. It is easy to find partial resemblances to the feudal system. The relation of patron and client in the Roman republic is not unlike that of lord

and vassal, in respect of mutual fidelity; but it was not founded upon the tenure of land, nor military service. The veteran soldiers, and, in later times, some barbarian allies of the emperors, received lands upon condition of public defence; but they were bound not to an individual lord, but to the state. Such a resemblance to fiefs may be found in the Zemindaries of Hindostan, and the Timariots of Turkey. The clans of the Highlanders and Irish followed their chieftain into the field; but their tie was that of imagined kindred and respect for birth, not the spontaneous compact of vassalage. Much less can we extend the name of feud, though it is sometimes strangely misapplied, to the polity of Poland and Russia. All the Polish nobles were equal in rights, and independent of each other; all who were less than noble were in servitude. No government can be more opposite to the long gradations and mutual duties of the feudal system.*

Extent of the feudal system.

The regular machinery and systematic establishment of feuds, in fact, may be considered as almost confined to the dominions of Charlemagne, and to those countries which afterward derived it from thence. In England, it can hardly be thought to have existed in a complete state before the conquest. Scotland, it is supposed, borrowed it soon after from her neighbour. The Lombards of Benevento had introduced feudal customs into the Neapolitan provinces, which the Norman conquerors afterward perfected. Feudal tenures were so general in the kingdom of Aragon, that I reckon it among the monarchies which were founded upon that basis.† Charlemagne's empire, it must be remembered extended as far as the Ebro. But in Castile* and Portugal they were very rare, and certainly could produce no political effect. Benefices for life were sometimes granted in the kingdoms of Denmark and Bohemia.† Neither of these, however, nor Sweden, nor Hungary, comes under the description of countries influenced by the feudal system ‡ That system, however, after all these limitations, was so extensively diffused, that it might produce confusion, as well as prolixity, to pursue the collateral branches of its history in all the countries where it prevailed. But this embarrassment may be avoided without any loss, I trust, of important information. The English constitution will find

* In civil history many instances might be found of feudal ceremonies in countries not regulated by the feudal law. Thus Selden has published an infeudation of a vayvod of Moldavia by the King of Poland, A. D. 1485, in the regular forms, vol. iii., p. 514. But these political fiefs have hardly any connexion with the general system, and merely denote the subordination of one prince or people to another.

† It is probable that feudal tenure was as ancient in the north of Spain, as in the contiguous provinces of France. But it seems to have chiefly prevailed in Aragon about the twelfth and thirteenth centuries, when the Moors south of the Ebro were subdued by the enterprise of private nobles, who, after conquering estates for themselves, did homage for them to the king. James I., upon the reduction of Valencia, granted lands by way of fief, on condition of defending that kingdom against the Moors, and residing personally upon the estate. Many did not perform this engagement, and were deprived of the lands in consequence. It appears by the testament of this monarch, that feudal tenures subsisted in every part of his dominions.—Martenne, Thesaurus Anecdotorum, t. i., p. 1141, 1155. An edict of Peter II. in 1210 prohibits the alienation of *emphyteuses* without the lord's consent. It is hard to say whether regular fiefs are meant by this word.—De Marca, Marca Hispanica, p. 1396. This author says that there were no arriere-fiefs in Catalonia.

The Aragonese fiefs appear however to have differed from those of other countries in some respects Zurita mentions fiefs *according to the custom of Italy*, which he explains to be such as were liable to the usual feudal aids for marrying the lord's daughter, and other occasions. We may infer, therefore, that these prestations were not customary in Aragon.—Anales de Aragon, t. ii., p. 62.

* What is said of vassalage in Alfonzo X.'s code, Las siete partidas, is short and obscure: nor am I certain that it meant any thing more than *voluntary commendation*, the custom mentioned in the former part of this chapter, from which the vassal might depart at pleasure.—See, however, Du Cange, v. Honour, where authorities are given for the existence of Castilian fiefs; and I have met with occasional mention of them in history. I believe that tenures of this kind were introduced in the fourteenth and fifteenth centuries; but not to any great extent.—Marina, Teoria de las Cortes, t. iii., p. 14.

Tenures of a feudal nature, as I collect from Freirii Institut. Juris Lusitani, tome ii., t. 1 and 3, existed in Portugal, though the jealousy of the crown prevented the system from being established. There were even territorial jurisdictions in that kingdom, though not, at least originally, in Castile.

† Daniæ regni politicus status.—Elzevir, 1629—Stransky, Respublica Bohemica.—Ib. In one of the oldest Danish historians, Sweno, I have noticed this expression: Waldemarus, patris tunc potitus *feodo*.—Langebek, Scrip. Rerum Danic., t. i., p. 62. By this he means the dutchy of Sleswic, not a fief, but an honour or government possessed by Waldemar. Saxo Grammaticus calls it more classically, paternæ præfecturæ dignitas. Sleswic was, in later times, sometimes held as a fief; but this does not in the least imply that lands in Denmark proper were feudal, of which I find no evidence.

‡ Though there were no feudal tenures in Sweden, yet the nobility and others were exempt from taxes on condition of serving the king with a horse and arms at their own expense; and a distinction was taken between *liber* and *tributarius*. But any one of the latter might become of the former class or vice versâ.—Sueciæ Descriptio. Elzevir, 1631 p. 92.

its place in another portion of this work; and the political condition of Italy, after the eleventh century, was not much affected, except in the kingdom of Naples, an inconsiderable object by the laws of feudal tenure. I shall confine myself, therefore, chiefly to France and Germany; and far more to the former than the latter country. But it may be expedient first to contemplate the state of society in its various classes during the prevalence of feudal principles, before we trace their influence upon the national government.

Classes of society. Nobility.

It has been laid down already as most probable that no proper aristocracy, except that of wealth, was known under the early kings of France; and it was hinted that hereditary benefices, or, in other words, fiefs, might supply the link that was wanting between personal privileges and those of descent. The possessors of beneficiary estates were usually the richest and most conspicuous individuals in the estate. They were immediately connected with the crown, and partakers in the exercise of justice and royal counsels. Their sons now came to inherit this eminence; and, as fiefs were either inalienable, or at least not very frequently alienated, rich families were kept long in sight; and, whether engaged in public affairs, or living with magnificence and hospitality at home, naturally drew to themselves popular estimation. The dukes and counts, who had changed their quality of governors into that of lords over the provinces intrusted to them, were at the head of this noble class. And in imitation of them, their own vassals, as well as those of the crown, and even rich allodialists, assumed titles from their towns or castles, and thus arose a number of petty counts, barons, and viscounts. This distinct class of nobility became coextensive with the feudal tenures. For the military tenant, however poor, was subject to no tribute, no prestation, but service in the field; he was the companion of his lord in the sports and feasting of his castle, the peer of his court; he fought on horseback, he was clad in the coat of mail, while the commonalty, if summoned at all to war, came on foot, and with no armour of defence. As every thing in the habits of society conspired with that prejudice, which, in spite of moral philosophers, will constantly raise the profession of arms above all others, it was a natural consequence that a new species of aristocracy, founded upon the mixed considerations of birth, tenure, and occupation, sprang out of the feudal system. Every possessor of a fief was a gentleman, though he owned but a few acres of land, and furnished his slender contribution towards the equipment of a knight. In the Libri Feudorum indeed, those who were three degrees removed from the emperor in order of tenancy are considered as ignoble;* but this is restrained to modern investitures; and in France, where sub-infeudation was carried the farthest, no such distinction has met my observation.†

There still, however, wanted something to ascertain gentility of blood, where it was not marked by the actual tenure of land. This was supplied by two innovations devised in the eleventh and twelfth centuries: the adoption of surnames, and of armorial bearings. The first are commonly referred to the former age, when the nobility began to add the names of their estates to their own, or, having any way acquired a distinctive appellation, transmitted it to their posterity.‡ As to armorial bearings, there is no doubt that emblems somewhat similar have been immemorially used both in war and peace. The shields of ancient warriors, and devices upon coins or seals, bear no distant resemblance to modern blazonry. But the general introduction of such bearings, as hereditary distinctions, has been sometimes attributed to tournaments, wherein the champions were distinguished by fanciful devices, sometimes to the crusades, where a multitude of all nations and languages stood in need of some visible token to denote the banners of their respective chiefs. In fact, the peculiar symbols of heraldry point to both these sources, and have been borrowed in part from each.§ Hereditary arms were perhaps scarcely used by private families before the beginning of the thirteenth century.‖ From that

* L. ii., t. 10.

† The nobility of an *allodial* possession in France depended upon its right to territorial jurisdiction. Hence there were *franc-aleux nobles*, and *franc aleux roturiers*; the latter of which were subject to the jurisdiction of the neighbouring lord.—Loiseau, Traité des Seigneuries, p. 76. Denisart, Diction naire des Décisions, art. Franc-aleu.

‡ Mabillon, Traité de Diplomatique, l. ii., c. 7. The authors of the Nouveau Traité de Diplomatique, t. ii., p. 563, trace the use of surnames in a few instances even to the beginning of the tenth century; but they did not become general, accord ing to them, till the thirteenth.

§ Mém. de l'Acad. des Inscriptions, t. xx., p. 579.

‖ I should be unwilling to make a negative assertion peremptorily in a matter of mere antiquarian research; but I am not aware of any decisive evidence that hereditary arms were borne in the twelfth century, except by a very few royal or

nme, however, they became very general, and have contributed to elucidate that branch of history, whatever value we may assign to it, which regards the descent of illustrious families.

When the privileges of birth had thus been rendered capable of legitimate proof, they were enhanced in a great degree, and a line drawn between the high-born and ignoble classes, almost as broad as that which separated liberty from servitude. All offices of trust and power were conferred on the former; those excepted which appertain to the legal profession. A plebeian could not possess a fief.* Such at least was the original strictness: but as the aristocratic principle grew weaker, an indulgence was extended to heirs, and afterward to purchasers.† They were even permitted to become noble by the acquisition, or at least by its possession for three generations.* But notwithstanding this ennobling quality of the land, which seems rather of an equivocal description, it became an established right of the crown to take, every twenty years, and on every change of the vassal, a fine known by the name of franc-fief, from plebeians in possession of land held by a noble tenure.† A gentleman in France or Germany could not exercise any trade without derogating, that is, losing the advantages of his rank. A few exceptions were made, at least in the former country, in favour of some liberal arts, and of foreign commerce.‡ But in nothing does the feudal haughtiness of birth more show itself, than in the disgrace which attended unequal marriages. No children could inherit a territory held immediately of the empire, unless both their parents belonged to the higher class of nobility. In France, the offspring of a gentleman by a plebeian mother were reputed noble for the purposes of inheritance, and of exemption from tribute.§ But they could not be received into any order of chivalry, though capable of simple knighthood; nor were they considered as any better than a bastard class, deeply tainted with the alloy of their

Its privileges.

most royal families.—Mabillon, Traité de Diplomatique, l. ii., c. 18. Those of Geoffrey the Fair, count of Anjou, who died in 1150, are extant on his shield: azure, four lions rampant or.—Hist. Littéraire de la France, t. ix., p. 165. If arms had been considered as hereditary at that time, this should be the bearing of England, which, as we al know, differs considerably. Louis VII. sprinkled his seal and coin with fleurs-de-lys, a very ancient device, or rather ornament; and the same as what are sometimes called bees. The golden ornaments found in the tomb of Childeric I. at Tournay, which may be seen in the library of Paris, may pass either for fleurs-de-lys or bees. Charles V. reduced the number to three, and thus fixed the arms of France. The counts of Toulouse used the cross in the twelfth age; but no other arms, Vaissette tells us, can be traced in Languedoc so far back, t. iii., p. 514.

Armorial bearings were in use among the Saracens during the later crusades; as appears by a passage in Joinville, t. i., p. 88 (Collect. des Mémoires), and Du Cange's note upon it. Perhaps, however, they may have been adopted in imitation of the Franks, like the ceremonies of knighthood. Villaret ingeniously conjectures, that the separation of different branches of the same family by their settlements in Palestine led to the use of hereditary arms, in order to preserve the connexion, t. xi., p. 113.

M. Sismondi, I observe, seems to entertain no doubt that the noble families of Pisa, including that whose name he bears, had their armorial distinctions in the beginning of the twelfth century.—Hist. des Républ. Ital., t. 1, p 373. It is at least probable that the heraldic devices were as ancient in Italy as in any part of Europe. And the authors of Nouveau Traité de Diplomatique, t. iv., p 388, incline to refer hereditary arms even in France to the beginning of the twelfth century, though without producing any evidence for this.

* We have no English word that conveys the full sense of *roturier*. How glorious is this deficiency in our political language, and how different are the ideas suggested by *commoner!* Roturier, according to Du Cange, is derived from rupturarius, a peasant, ab agrum rumpendo.

† The Establishments of St. Louis forbid this innovation, but Beaumanoir contends that the prohibition does not extend to descent or marriage, c. 48 The roturier who acquired a fief, if he challenged any one, fought with ignoble arms; but in all other respects was treated as a gentleman, ibid. Yet a knight was not obliged to do homage to the roturier, who became his superior by the acquisition of a fief on which he depended.—Carpentier Supplement. ad Du Cange, voc. Homagium.

* Etablissemens de St. Louis, c. 143, and notes in Ordonnances des Rois, t. i. See also prefaces to the same volume, p. xii. According to Mably, the possession of a fief did not cease to confer nobility (analogous to our barony by tenure) till the Ordonnance de Blois, in 1579.—Observations sur l'Hist. de France, l. iii., c. 1, note 6. But Laurière, author of the preface above cited, refers to Bouteiller, a writer of the fourteenth century, to prove that no one could become noble without the king's authority. The contradiction will not much perplex us, when we reflect on the disposition of lawyers to ascribe all prerogatives to the crown, at the expense of territorial proprietors, and of ancient customary law.

† The right, originally perhaps usurpation, called franc-fief, began under Philip the Fair.—Ordonnances des Rois, t. i., p. 324. Denisart, Art. Franc-fief.

‡ Houard, Dict. du Droit Normand. Encyclopédie, Art. Noblesse. Argou, l. ii., c. 2.

§ Nobility, to a certain degree, was communicated through the mother alone, not only by the custom of Champagne, but in all parts of France; that is, the issue were "gentilhommes du fait de leur corps," and could possess fiefs; but, says Beaumanoir, "la gentillesse par laquelle on devient chevalier doit venir de par le père," c. 45. There was a proverbial maxim in the French law, rather emphatic than decent, to express the derivation of nobility from the father and of freedom from the mother.

maternal extraction. Many instances occur where letters of nobility have been granted to reinstate them in their rank.* For several purposes it was necessary to prove four, eight, sixteen, or a greater number of quarters, that is, of coats borne by paternal and maternal ancestors, and the same practice still subsists in Germany.

It appears, therefore, that the original nobility of the continent were what we may call self-created, and did not derive their rank from any such concessions of their respective sovereigns as have been necessary in subsequent ages. In England, the baronies by tenure might belong to the same class, if the lands upon which they depended had not been granted by the crown. But the kings of France, before the end of the thirteenth century, began to assume a privilege of creating nobles by their own authority, and without regard to the tenure of land. Philip the Hardy, in 1271, was the first French king who granted letters of nobility; under the reigns of Philip the Fair and his children they gradually became frequent.† This effected a change in the character of the nobility; and had as obvious a moral, as other events of the same age had a political influence, in diminishing the power and independence of the territorial aristocracy. The privileges originally connected with ancient lineage and extensive domains became common to the low-born creatures of a court, and lost consequently part of their title to respect. The lawyers, as I have observed above, pretended that nobility could not exist without a royal concession. They acquired themselves, in return for their exaltation of prerogative, an official nobility by the exercise of magistracy. The institutions of chivalry again gave rise to a vast increase of gentlemen; knighthood, on whomsoever conferred by the sovereign, being a sufficient passport to noble privileges. It was usual, perhaps, to grant previous letters of nobility to a plebeian for whom the honour of knighthood was designed.

In this noble or gentle class there were several gradations. All those in France who held lands immediately depending upon the crown, whatever titles they might bear, were comprised in the order of barons. These were, originally, the peers of the king's court; they possessed the higher territorial jurisdiction, and had the right of carrying their own banner into the field.* To these corresponded the Vassi vassores majores and Capitanei of the empire. In a subordinate class were the vassals of this high nobility, who, upon the continent, were usually termed Vavassors; an appellation not unknown, though rare, in England.† The Châtelains belonged to the order of Vavassors, as they held only arriere fiefs: but having fortified houses, from which they derived their name (a distinction very important in those times), and possessing ampler rights of territorial justice, they rose above the level of their fellows in the scale of tenure.‡ But after the personal nobility of chivalry became the object of pride, the Vavassors, who obtained knighthood, were commonly styled bachelors; those who had not received that honour fell into the class of squires,§ or damoiseaux.

Different orders of nobility.

* Beaumanoir, c. 34. Du Cange, v. Baro. Etablissemens de St. Louis, l. i., c. 24; l. ii., c. 36. The vassals of inferior lords were however called, improperly, barons, both in France and England. —Recueil des Historiens, t. xi., p. 300. Madox, Baronia Anglica, p. 133. In perfect strictness, those only whose immediate tenure of the crown was older than the accession of Hugh Capet, were barons of France; namely, Bourbon, Coucy, and Beaujeu, or Beaujolois. It appears, however, by a register in the reign of Philip Augustus, that fifty-nine were reckoned in that class; the feudatories of the Capetian fiefs, Paris and Orleans, being confounded with the original vassals of the crown. —Du Cange, voc. Baro.

† Du Cange, v. Vavassor. Velly, t. vi., p. 151. Madox, Baronia Anglica, p. 135. There is, perhaps, hardly any word more loosely used than Vavassor. Bracton says, Sunt etiam Vavassores, magnæ dignitatis viri. In France and Germany they are sometimes named with much less honour. Je suis un chevalier né de cest part, de *vavasseurs et de basse gent*, says a romance. This is to be explained by the poverty to which the subdivision of fiefs reduced idle gentlemen.

‡ Du Cange, v. Castellanus. Coûtumes de Poitou, tit. iii. Loiseau, Traité des Seigneuries, p. 160. Whoever had a right to a castle had la haute justice; this being so incident to the castle, that it was transferred along with it. There might, however, be a Seigneur haut-justicier below the Châtelain; and a ridiculous distinction was made as to the number of posts by which their gallows might be supported. A baron's instrument of execution stood on four posts; a châtelain's on three; while the inferior lord, who happened to possess la haute justice, was forced to hang his subjects on a two legged machine.—Coûtumes de Poitou. Du Cange v. Furca.

Laurière quotes from an old manuscript the following short scale of ranks. Duc est la première dignité, puis comtes, puis viscomtes, et puis baron, et puis châtelain, et puis vavasseur, et puis citaen, et puis villain.—Ordonnances des Rois, t. i., p. 277.

§ The sons of knights, and gentlemen not yet knighted, took the appellation of squires in the twelfth century.—Vaissette, Hist. de Lang., t. iii.

* Beaumanoir, c. 45. Du Cange, Dissert. 10, sur Joinville. Carpentier, voc. Nobilitatio.

† Velly, t. vi., p. 432. Du Cange and Carpentier, voce Nobilitaire, &c. Boulainvilliers, Hist. de l'ancien Gouvernement de France, t. i., p. 317

It will be needless to dwell upon the condition of the inferior clergy, whether secular or professed, as it bears little upon the general scheme of polity. The prelates and abbots, however, it must be understood, were completely feudal nobles. They swore fealty for their lands to the king or other superior, received the homage of their vassals, enjoyed the same immunities, exercised the same jurisdiction, maintained the same authority, as the lay lords among whom they dwelt. Military service does not appear to have been reserved in the beneficiary grants made to cathedrals and monasteries. But, when other vassals of the crown were called upon to repay the bounty of their sovereign by personal attendance in war, the ecclesiastical tenants were supposed to fall within the scope of this feudal duty, which men, little less uneducated and violent than their compatriots, were not reluctant to fulfil. Charlemagne exempted or rather prohibited them from personal service by several capitularies.* The practice, however, as every one who has some knowledge of history will be aware, prevailed in succeeding ages. Both in national and private warfare, we find very frequent mention of martial prelates.† But, contrary as this actual service might be to the civil, as well as ecclesiastical laws, the clergy who held military fiefs were of course bound to fulfil the chief obligation of that tenure, and send their vassals into the field. We have many instances of their accompanying the army, though not mixing in the conflict; and even the parish priests headed the militia of their villages.* The prelates however sometimes contrived to avoid this military service, and the payments introduced in commutation for it, by holding lands in frank-almoigne, a tenure which exempted them from every species of obligation, except that of saying masses for the benefit of the grantor's family.† But, notwithstanding the warlike disposition of some ecclesiastics, their more usual inability to protect the estates of their churches against rapacious neighbours suggested a new species of feudal relation and tenure. The rich abbeys elected an advocate, whose business it was to defend their interests both in secular courts, and, if necessary, in the field. Pepin and Charlemagne are styled Advocates of the Roman church. This indeed was on a magnificent scale: but in ordinary practice, the advocate of a monastery was some neighbouring lord, who, in return for his protection, possessed many lucrative privileges, and, very frequently, considerable estates by way of fief from his ecclesiastical clients. Some of these advocates are reproached with violating their obligation, and becoming the plunderers of those whom they had been retained to defend.‡

Clergy.

The classes below the gentry may be divided into freemen and villeins. Of the first were the inhabitants of chartered towns, the citizens and burghers of whom more will be said presently. As to those who dwelt in the country, we can have no difficulty in recognising, so far as England is concerned, the soccagers, whose tenure was free, though not so noble as knight's service, and a numerous body of tenants for term of life, who formed that ancient basis of our strength, the English yeomanry. But the mere freemen are not at first sight so distinguishable in other countries. In French records and law-books of feudal times, all besides the gentry are usually confounded under the names of villeins or hommes de pooste (gens potestatis).§

p. 513. That of Damoiseau came into use in the thirteenth.—Id., t. iii., p. 529. The latter was, I think, more usual in France. Du Cange gives little information as to the word squire. (Scutifer.) "Apud Anglos," he says, "penultima est nobilitatis descriptio, inter Equitem et Generosum. Quod et alibi in usu fuit." Squire was not used as a title of distinction in England till the reign of Edward III., and then but sparingly. Though by Henry VI.'s time it was grown more common, yet none assumed it but the sons and heirs of knights, and some military men; except officers in courts of justice, who, by patent or prescription, had obtained that addition.—Selman's Posthumous Works, p. 234.

* Mably, l. i., c. 5. Baluze, t. i., p. 410, 932, 987. Any bishop, priest, deacon, or subdeacon bearing arms was to be degraded, and not even admitted to lay communion.—Id., p. 932.

† One of the latest instances probably of a fighting bishop is Jean Montaigu, archbishop of Sens, who was killed at Azincourt. Monstrelet says, that he was "non pas en estat pontifical, car au lieu de mitre il portoit une bacinet, pour dalmatique portoit un haubergeon, pour chasuble la piece d'acier; et au lieu de crosse, portoit une hache," fol. 132

* Daniel, Hist. de la Milice Françoise, t. i., p. 88.

† Du Cange, Eleemosyna Libera. Madox, Baronia Angl., p. 115. Coke on Littleton, and other English law-books.

‡ Du Cange, v. Advocatus; a full and useful article. Recueil des Historiens, t. xi., preface, p. 184.

§ Homo potestatis, non nobilis—Ita nuncupantur, quod in potestate domini sunt—Opponuntur viris nobilibus; apud Butilerium Consuetudinarii vocantur, Coustumiers, prestationibus subjacet obnoxii et operis.—Du Cange, v. Potestas. As all these freemen were obliged, by the ancient laws of France, to live under the protection of some pa-

This proves the slight estimation in which all persons of ignoble birth were considered. For undoubtedly there existed a great many proprietors of and and others, as free, though not as privileged, as the nobility. In the south of France, and especially Provence, the number of freemen is remarked to have been greater than in the parts on the right bank of the Loire, where the feudal tenures were almost universal.* I shall quote part of a passage in Beaumanoir, which points out this distinction of ranks pretty fully. "It should be known," he says,† "that there are three conditions of men in this world; the first is that of gentlemen; and the second is that of such as are naturally free, being born of a free mother. All who have a right to be called gentlemen are free, but all who are free are not gentlemen. Gentility comes by the father, and not by the mother; but freedom is derived from the mother only; and whoever is born of a free mother is himself free, and has free power to do any thing that is lawful."

In every age and country, until times Serfs or villeins. comparatively recent, personal servitude appears to have been the lot of a large, perhaps the greater portion, of mankind. We lose a good deal of our sympathy with the spirit of freedom in Greece and Rome, when the importunate recollection occurs to us of the tasks which might be enjoined, and the punishments which might be inflicted, without control either of law or opinion, by the keenest patriot of the Comitia, or the Council of Five Thousand. A similar, though less powerful, feeling will often force itself on the mind, when we read the history of the middle ages. The Germans, in their primitive settlements, were accustomed to the notion of slavery, incurred not only by captivity, but by crimes, by debt, and especially by loss in gaming. When they invaded the Roman empire, they found the same condition established in all its provinces. Hence, from the beginning of the era now under review, servitude, under somewhat different modes, was extremely common. There is some difficulty in ascertaining its varieties and stages. In the Salique laws, and in the Capitularies, we read not only of Servi, but of Tributarii, Lidi, and Coloni, who were cultivators of the earth, and subject to residence upon their master's estate, though not destitute of property or civil rights.* Those who appertained to the demesne lands of the crown were called Fiscalini. The composition for the murder of one of these was much less than that for a freeman.† The number of these servile cultivators was undoubtedly great, yet in those early times, I should conceive, much less than it afterward became. Property was for the most part in small divisions, and a Frank who could hardly support his family upon a petty allodial patrimony, was not likely to encumber himself with many servants. But the accumulation of overgrown private wealth had a natural tendency to make slavery more frequent. Where the small proprietors lost their lands by mere rapine, we may believe that their liberty was hardly less endangered.‡ Even where this was not the case, yet, as the labour either of artisans or of free husbandmen was but sparingly in demand, they were often compelled to exchange their liberty for bread.§ In seasons also of famine, and they were not unfrequent, many freemen sold themselves to slavery. A capitulary of Charles the Bald. in 864, permits their redemption at an equitable price.‖ Others became slaves, as more

ticular lord, and found great difficulty in choosing a new place of residence, as they were subject to many tributes and oppressive claims on the part of their territorial superiors, we cannot be surprised that they are confounded, at this distance, with men in actual servitude.

* Heeren, Essai sur les Croisades, p. 122.

† Coûtumes de Beauvoisis, c. 45, p. 256.

* These passages are too numerous for reference. In a very early charter in Martenne's Thesaurus Anecdotorum, t. i., p. 20, lands are granted, cum hominibus ibidem permanentibus, quos *colonario ordine vivere* constituimus. Men of this class were called in Italy Aldiones. A Lombard capitulary of Charlemagne says: Aldiones eâ lege vivunt in Italiâ sub servitute dominorum suorum, quâ Fiscalini, vel Lidi vivunt in Franciâ.—Muratori, Dissert. 14.

† Originally it was but 45 solidi.—Leges Salicæ, c. 43; but Charlemagne raised it to 100.—Baluzii Capitularia, p. 402. There are several provisions in the laws of this great and wise monarch in favour of liberty. If a lord claimed any one either as his villein or slave (colonus sive servus), who had escaped beyond his territory, he was not to be given up till strict inquiry had been made in the place to which he was asserted to belong, as to his condition and that of his family, p 400. And if the villein showed a charter of enfranchisement, the proof of its forgery was to lie upon the lord. No man's liberty could be questioned in the Hundred-court.

‡ Montesquieu ascribes the increase of personal servitude in France to the continual revolts and commotions under the two first dynasties, l. xxx., c. 11.

§ Du Cange, v. Obnoxatio.

‖ Baluzii Capitularia. The Greek traders purchased famished wretches on the coasts of Italy whom they sold to the Saracens.—Muratori, Annali d'Italia. A. D. 785. Much more would persons in his extremity sell themselves to neighbouring lords.

fortunate men became vassals, to a powerful lord, for the sake of his protection. Many were reduced into this state through inability to pay those pecuniary compositions for offences, which were numerous, and sometimes heavy, in the barbarian codes of law; and many more by neglect of attendance on military expeditions of the king, the penalty of which was a fine called Heribann, with the alternative of perpetual servitude.* A source of loss of liberty which may strike us as more extraordinary was superstition; men were infatuated enough to surrender themselves, as well as their properties, to churches and monasteries, in return for such benefits as they might reap by the prayers of their new masters.†

The characteristic distinction of a villein was his obligation to remain upon his lord's estate. He was not only precluded from selling the lands upon which he dwelt, but his person was bound, and the lord might reclaim him at any time, by suit in a court of justice, if he ventured to stray. But, equally liable to this confinement, there were two classes of villeins, whose condition was exceedingly different. In England, at least from the reign of Henry II., one only, and that the inferior species, existed; incapable of property, and destitute of redress, except against the most outrageous injuries.‡ The lord could seize whatever they acquired or inherited, or convey them, apart from the land, to a stranger. Their tenure bound them to what were called villein services, ignoble in their nature, and indeterminate in their degree; the felling of timber, the carrying of manure, the repairing of roads for their lord, who seems to have possessed an equally unbounded right over their labour and its fruits. But by the customs of France and Germany, persons in this abject state seem to have been called serfs, and distinguished from villeins, who were only bound to fixed payments and duties in respect of their lord, though, as it seems, without any legal redress, if injured by him.§ "The third estate of men," says Beaumanoir, in the passage above quoted, "is that of such as are not free; and these are not all of one condition, for some are so subject to their lord that he may take all they have, alive or dead, and imprison him whenever he pleases, being accountable to none but God; while others are treated more gently, from whom the lord can take nothing but customary payments, though at their death all they have escheats to him."*

Under every denomination of servitude, the children followed their mother's condition; except in England, where the father's state determined that of the children; on which account, bastards of female villeins were born free; the law presuming the liberty of their father.† The proportion of freemen, therefore, would have been miserably diminished, if there had been no reflux of the tide which ran so strongly towards slavery. But the usage of manumission made a sort of circulation between these two

* Du Cange, Heribannum. A full heribannum was 60 solidi; but it was sometimes assessed in proportion to the wealth of the party.

† Beaumanoir, c. 45.

‡ Littleton, l. ii., c 11. Non potest aliquis (says Glanvil), in villenagio positus, libertatem suam propriis denariis suis quærere—quia omnia catalla cujuslibet nativi intelliguntur esse in potestate domini sui, l. v., c. 5.

§ This is clearly expressed in a French law-book of the thirteenth century, the Conseil of Pierre des Fontaines, q oted by Du Cange, voc. Villanus. Et sache bien que selon Dieu tu n'as mie pleniere poesté sur ton vilain. Dont se tu prens du sien fors les droites redevances, que te doit, tu les prens contre Dieu, et sur le peril de t'ame et come robierres. Et ce qu'on dit toutes les choses que vilains a, sont au Seigneur, c'es voirs a garder. Car s'il estoient son seigneur propre, il n'avoit nule difference entre serf et vilain, mais par notre usage n'a entre toi et ton vilain juge fors Dieu, tant com il est tes couchans et tes levans, s'il n'a autre loi vers toi fors la commune. This seems to render the distinction little more than theoretical.

* Beaumanoir, c 45. Du Cange, Villanus, Servus, and several other articles. Schmidt, Hist. des Allemands, t. ii., p. 171, 435. By a law of the Lombards, a free woman who married a slave might be killed by her relations, or sold; if they neglected to do so, the fisc might claim her as its own.—Muratori, Dissert. 14. In France also, she was liable to be treated as a slave.—Marculfi Formulæ, l. ii., 29. Even in the twelfth century, it was the law of Flanders, that whoever married a villein became one himself, after he had lived with her a twelvemonth.—Recueil des Historiens, t. xiii., p. 350. And, by a capitulary of Pepin, if a man married a villein believing her to be free, he might repudiate her and marry another.—Baluze, p. 181.

Villeins themselves could not marry without the lord's license, under penalty of forfeiting their goods, or at least of a mulct.—Du Cange, v. Forismaritagium. This seems to be the true origin of the famous mercheta mulierum, which has been ascribed to a very different custom.—Du Cange, v. Mercheta Mulierum. Dalrymple's Annals of Scotland, vol. i., p. 312. Archæologia, vol. xii., p. 31.

† Littleton, s. 188. Bracton indeed holds, that the spurious issue of a neif, though by a free father, should be a villein, quia sequitur conditionem matris, quasi vulgo conceptus, l. i., c. 6. But the laws of Henry I. declare that a son should follow his father's condition; so that this peculiarity is very ancient in our law.—Leges Hen. I., c. 75 and 77.

General abolition of villanage

states of mankind. This, as is well known, was an exceedingly common practice with the Romans; and is mentioned, with certain ceremonies prescribed, in the Frankish and other early laws. The clergy, and especially several popes, enforced it as a duty upon laymen; and inveighed against the scandal of keeping Christians in bondage.* But they were not, it is said, equally ready in performing their own parts; the villeins upon church lands were among the last who were emancipated.† As society advanced in Europe, the manumission of slaves grew more frequent.‡ By the indulgence of custom in some places, or perhaps by original convention, villeins might possess property, and thus purchase their own redemption. Even where they had no legal title to property, it was accounted inhuman to divest them of their little possession (the peculium of Roman law); nor was their poverty, perhaps, less tolerable, upon the whole, than that of the modern peasantry in most countries of Europe. It was only in respect of his lord, it must be remembered, that the villein, at least in England, was without rights;§ he might inherit, purchase, sue in the courts of law; though, as defendant in a real action, or suit wherein land was claimed, he might shelter himself under the plea of villanage. The peasants of this condition were sometimes made use of in war, and rewarded with enfranchisement; especially in Italy, where the cities and petty states had often occasion to defend themselves with their own population; and in peace the industry of free labourers must have been found more productive and better directed. Hence the eleventh and twelfth centuries saw the number of slaves in Italy begin to decrease; early in the fifteenth, a writer quoted by Muratori speaks of them as no longer existing.* The greater part of the peasants in some countries of Germany had acquired their liberty before the end of the thirteenth century; in other parts, as well as in all the northern and eastern regions of Europe, they remained in a sort of villanage till the present age. Some very few instances of predial servitude have been discovered in England, so late as the time of Elizabeth,† and perhaps they might be traced still lower. Louis Hutin, in France, after innumerable particular instances of manumission had taken place, by a general edict in 1315, reciting that his kingdom is denominated the kingdom of the Franks, that he would have the fact to correspond with the name, emancipates all persons in the royal domains upon paying a just composition, as an example for other lords possessing villeins to follow.‡ Philip the Long renewed the same edict three years afterward; a proof that it had not been carried into execution.§ Indeed, there are letters of the former prince, wherein, considering that many of his subjects are not apprized of the extent of the benefit conferred upon them, he directs his officers to tax them as high as their fortunes can well bear.‖

* Enfranchisements by testament are very common. Thus, in the will of Seniofred, count of Barcelona, in 966, we find the following piece of corrupt Latin: de ipsos servos meos et ancillas, illi qui traditi fuerunt faciatis illos liberos propter remedium animæ meæ; et alii qui fuerunt de parentorum meorum remaneant ad fratres meos.—Marca Hispanica, p. 887.

† Schmidt, Hist. des All., t. i., p. 361. See, however, a charter of manumission from the chapter of Orleans, in 1224, to all their slaves, under certain conditions of service.—Martenne, Thesaurus Anecdot., t. i., p. 914. Conditional manumissions were exceedingly common.—Du Cange, v. Manumissio; a long article.

‡ No one could enfranchise his villein without the superior lord's consent; for this was to diminish the value of his land *apeticer le fief*.—Beaumanoir, c. 15. Etablissemens de St. Louis, c. 34. It was necessary, therefore, for the villein to obtain the suzerain's confirmation; otherwise he only changed masters and escheated, as it were, to the superior; for the lord who had granted the charter of franchise was *estopped* from claiming him again.

§ Littleton, s. 189. Perhaps this is not applicable to other countries. Villeins were incapable of being received as witnesses against freemen.—Recueil des Historiens, t. xiv., préface, p. 65. There are some charters of kings of France admitting the serfs of particular monasteries to give evidence, or to engage in the judicial combat, against freemen.—Ordonnances des Rois, t. i., p. 3. But I do not know that their testimony, except against their lord, was ever refused in England; their state of servitude not being absolute, like that of negroes in the West Indies, but particular and relative, as that of an apprentice or hired servant. This subject, however, is not devoid of obscurity, and I may probably return to it in another place

* Dissert. 14.

† Barrington's Observations on the ancient Statutes, p. 274.

‡ Ordonnances des Rois, t. i., p. 583.

§ Id., p. 653.

‖ Velly, t. viii., p. 38. Philip the Fair had emancipated the villeins in the royal domains throughout Languedoc, retaining only an annual rent for their lands, which thus became *censives*, or *emphyteuses*. It does not appear by the charter that he sold this enfranchisement, though there can be little doubt about it. He permitted his vassals to follow the example.—Vaissette, Hist. de Languedoc, t. iv. Appendix, p. 3 and 12.

It is not generally known, I think, that predial servitude was not abolished in all parts of France till the revolution. In some places, says Pasquier, the peasants are taillables à volonté, that is, their contribution is not permanent, but assessed by the lord with the advice of prud' hommes ressean

It is deserving of notice that a distinction existed from very early times in the nature of lands, collateral, as it were, to that of persons. Thus we find mansi ingenui and mansi serviles in the oldest charters, corresponding to the bocland and folkland of the Anglo-Saxons, the liberum tenementum and villenagium, or freehold and copyhold, of our later law. In France, all lands held in *roture* appear to be considered as villein tenements, and are so termed in Latin, though many of them rather answer to our soccage freeholds. But, although originally this servile quality of lands was founded on the state of their occupiers, yet there was this particularity, that lands never changed their character along with that of the possessor; so that a nobleman might, and often did, hold estates in roture, as well as a roturier acquire a fief. Thus in England the terre tenants in villanage, who occur in our old books, were not villeins, but freemen holding lands which had been from time immemorial of a villein quality.

Comparative state of France and Germany.

At the final separation of the French from the German side of Charlemagne's empire by the treaty of Verdun, in 843, there was perhaps hardly any difference in the constitution of the two kingdoms. If any might be conjectured to have existed, it would be a greater independence, and fuller rights of election in the nobility and people of Germany. But in the lapse of another century, France had lost all her political unity, and her kings all their authority; while the Germanic empire was entirely unbroken, under an effectual, though not absolute, control of its sovereign. No comparison can be made between the power of Charles the Simple and Conrad the First, though the former had the shadow of an hereditary right, and the latter was chosen from among his equals. A long succession of feeble princes or usurpers, and destructive incursions of the Normans, reduced France almost to a dissolution of society; while Germany, under Conrad, Henry, and the Othos, found their arms not less prompt and successful against revolted vassals than external enemies. The high dignities were less completely hereditary than they had become in France they were granted, indeed, pretty regularly, but they were solicited as well as granted; while the chief vassals of the French crown assumed them as patrimonial sovereignties, to which a royal investiture gave more of ornament than sanction.

In the eleventh century, these imperial prerogatives began to lose part of their lustre. The long struggles of the princes and clergy against Henry IV. and his son, the revival of more effective rights of election on the extinction of the house of Franconia, the exhausting contests of the Swabian emperors in Italy, the intrinsic weakness produced by a law of the empire, according to which the reigning sovereign could not retain an imperial fief more than a year in his hands, gradually prepared that independence of the German aristocracy, which reached its height about the middle of the thirteenth century. During this period the French crown had been insensibly gaining strength; and as one monarch degenerated into the mere head of a confederacy, the other acquired unlimited power over a solid kingdom.

It would be tedious, and not very instructive, to follow the details of German public law during the middle ages: nor are the more important parts of it easily separable from civil history. In this relation they will find a place in a subsequent chapter of the present work

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sur les lieux, according to the peasant's ability. Others pay a fixed sum Some are called serfs de poursuite, who cannot leave their habitations, but may be followed by the lord into any part of France for the taille upon their goods. This was the case in part of Champagne, and the Nivernois. Nor could these serfs, or gens de mainmorte, as they were sometimes called, be manumitted without letters patent of the king, purchased by a fine.—Recherches de la France, l. iv., c. 5. Du Bos informs us that, in 1651, the Tiers Etat prayed the king to cause all serfs (*hommes de poote*) to be enfranchised on paying a composition; but this was not complied with, and they existed in many parts when he wrote.—Histoire Critique, t. iii., p. 298. Argou, in his Institutions du Droit François, confirms this, and refers to the customaries of Nivernois and Vitry, l. i., c. 1. And M. de Bréquigny, in his preface to the twelfth volume of the collection of Ordonnances, p. 22, says, that throughout almost the whole jurisdiction of the parliament of Besançon, the peasants were attached to the soil, not being capable of leaving it without the lord's consent; and that in some places he even inherited their goods in exclusion of the kindred. I recollect to have read in some part of Voltaire's correspondence, an anecdote of his interference, with that zeal against oppression which is the shining side of his moral character, in behalf of some of these wretched slaves of Franche-comté.

About the middle of the fifteenth century, some Catalonian serfs who had escaped into France being claimed by their lords, the parliament of Toulouse declared that every man who entered the kingdom *en criant France*, should become free. The liberty of our kingdom is such, says Mezeray, that its air communicates freedom to those who breathe it, and our kings are too august to reign over any but freemen.—Villaret, t. xv., p. 348. How much pretence Mezeray had for such a flourish may be decided by the former part of this note

France demands a more minute attention; and in tracing the character of the feudal system in that country, we shall find ourselves developing the progress of a very different polity.

Privileges of the French vassals.

To understand in what degree the peers and barons of France, during the prevalence of feudal principles, were independent of the crown, we must look at their leading privileges. These may be reckoned:—1. The right of coining money; 2. That of waging private war; 3. The exemption from all public tributes, except the feudal aids; 4. The freedom from legislative control; and, 5. The exclusive exercise of original judicature in their dominions. Privileges so enormous, and so contrary to all principles of sovereignty, might lead us, in strictness, to account France rather a collection of states, partially allied to each other, than a single monarchy.

Coining money.

I. Silver and gold were not very scarce in the first ages of the French monarchy; but they passed more by weight than by tale. A lax and ignorant government, which had not learned the lucrative mysteries of a royal mint, was not particularly solicitous to give its subjects the security of a known stamp in their exchanges.* In some cities of France, money appears to have been coined by private authority before the time of Charlemagne; at least one of his capitularies forbids the circulation of any that had not been stamped in the royal mint. His successors indulged some of their vassals with the privilege of coining money for the use of their own territories, but not without the royal stamp. About the beginning of the tenth century, however, the lords, among their other assumptions of independence, issued money with no marks but their own.† At the accession of Hugh Capet, as many as a hundred and fifty are said to have exercised this power. Even under St. Louis, it was possessed by about eighty; who, excluding, as far as possible, the royal coin from circulation, enriched themselves at their subjects' expense by high duties (seigniorages), which they imposed upon every new coinage, as well as by debasing its standard.* In 1185, Philip Augustus requests the Abbot of Corvey, who had desisted from using his own mint, to let the royal money of Paris circulate through his territories; promising that, when it should please the abbot to coin money afresh for himself, the king would not oppose its circulation.†

Several regulations were made by Louis IX. to limit, as far as lay in his power, the exercise of this baronial privilege; and, in particular, by enacting that the royal money should circulate in the domains of those barons who had mints, concurrently with their own; and exclusively within the territories of those who did not enjoy that right. Philip the Fair established royal officers of inspection in every private mint. It was asserted in his reign, as a general truth, that no subject might coin silver money.‡ In fact, the adulteration practised in those baronial mints had reduced their pretended silver to a sort of black metal, as it was called (moneta nigra), into which little entered but copper. Silver, however, and even gold, were coined by the dukes of Britany so long as that fief continued to exist. No subjects ever enjoyed the right of coining silver in England without the royal stamp and superintendence:§ a remarkable proof of the restraint in which the feudal aristocracy was always held in this country.

Right of private war.

II. The passion of revenge, always among the most ungovernable in human nature, acts with such violence upon barbarians, that it is utterly beyond the control of their imperfect arrangements of polity. It seems to them

* The practice of keeping fine gold and silver uncoined prevailed among private persons, as well as in the treasury, down to the time of Philip the Fair. Nothing is more common than to find, in the instruments of earlier times, payments or fines stipulated by weight of gold or silver. Le Blanc therefore thinks that little money was coined in France, and that only for small payments.—Traité des Monnoyes. It is curious, that though there are many gold coins extant of the first race of kings, yet few or none are preserved of the second or third, before the reign of Philip the Fair.—Du Cange, v. Moneta.

† Vaissette, Hist. de Languedoc, t. ii., p. 110. Rec. des Historiens, t. xi., préf., p. 180. Du Cange, v. Moneta.

* Le Blanc, Traité des Monnoyes, p. 91.

† Du Cange, v. Moneta. Velly, Hist. de France, t. ii., p. 93. Villaret, t. xiv., p. 200.

‡ Du Cange, v. Moneta. The right of debasing the coin was also claimed by this prince as a choice flower of his crown. Item, abaisser et amenuser la monnoye, est privilege especial au roy de son droit royal, si que a luy appartient, et non a autre, et en core en un seul cas, c'est a scavoir en necessité, et lors ne vient pas le ganeg ne convertit en son profit especial, mais en profit, et en la defence du commun. This was in a process commenced by the king's procureur-general against the Comte de Nevers for defacing his coin.—Le Blanc, Traité des Monnoyes, p. 92. In many places the lord took a sum from his tenants every three years, under the name of monetagium or focagium, in lieu of debasing his money. This was finally abolished in 1380.—Du Cange, v. Monetagium.

§ I do not extend this to the *fact;* for in the anarchy of Stephen's reign, both bishops and barons coined money for themselves.—Hoveden, p. 490

no part of the social compact, to sacrifice the privilege which nature has placed in the arm of valour. Gradually, however, these fiercer feelings are blunted, and another passion, hardly less powerful than resentment, is brought to play in a contrary direction. The earlier object accordingly of jurisprudence is to establish a fixed atonement for injuries, as much for the preservation of tranquillity as the prevention of crime. Such were the weregilds of the barbaric codes, which, for a different purpose, I have already mentioned.* But whether it were that the kindred did not always accept, or the criminal offer, the legal composition, or that other causes of quarrel occurred, private feuds (faida) were perpetually breaking out, and many of Charlemagne's capitularies are directed against them. After his time, all hope of restraining so inveterate a practice was at an end; and every man who owned a castle to shelter him in case of defeat, and a sufficient number of dependants to take the field, was at liberty to retaliate upon his neighbours whenever he thought himself injured. It must be kept in mind, that there was frequently either no jurisdiction to which he could appeal, or no power to enforce its awards; so that we may consider the higher nobility of France as in a state of nature with respect to each other, and entitled to avail themselves of all legitimate grounds of hostility. The right of waging private war was moderated by Louis IX., checked by Philip IV., suppressed by Charles VI., but a few vestiges of its practice may be found still later.†

III. In the modern condition of governments, taxation is a chief engine of the well-compacted machinery which regulates the system. The payments, the prohibitions, the licenses, the watchfulness of collection, the evasions of fraud, the penalties and forfeitures, that attend a fiscal code of laws, present continually to the mind of the most remote and humble individual, the notion of a supreme, vigilant, and coercive authority. But the early European kingdoms knew neither the necessities nor the ingenuity of modern finance. From their demesne lands, the kings of France and Lombardy supplied the common expenses of a barbarous court. Even Charlemagne regulated the economy of his farms with the minuteness of a steward, and a large proportion of his capitularies are directed to this object. Their actual revenue was chiefly derived from free gifts made, according to an ancient German custom, at the annual assemblies* of the nation, from amercements paid by allodial proprietors for default of military service, and from the freda, or fines accruing to the judge out of compositions for murder.† These amounted to one third of the whole weregild; one third of this was paid over by the count to the royal exchequer. After the feudal government prevailed in France, and neither the heribannum nor the weregild continued in use, there seems to have been hardly any source of regular revenue besides the domanial estates of the crown: unless we may reckon as such, that during a journey, the king had a prescriptive right to be supplied with necessaries by the towns and abbeys through which he passed; commuted sometimes into petty regular payments, called droits de giste et de chevauché.‡ Hugh Capet was nearly indigent as King of France; though, as Count of Paris and Orleans, he might take the feudal aids and reliefs of his vassals. Several other small emoluments of himself and his successors, whatever they may since have been considered, were in that age rather seigniorial than royal. The rights of toll, of customs, of alienage (aubaine), generally even the regale, or enjoyment of the temporalities

Immunity from taxation.

Revenues of Kings of France

* The antiquity of compositions for murder is illustrated by Iliad Σ. 498, where, in the description of the shield of Achilles, two disputants are represented wrangling before the judge for the weregild, or price of blood; ἕνεκα ποινῆς ἀνέρος ἀποφθιμένου.

† The subject of private warfare is treated so exactly and perspicuously by Robertson, that I should only waste the reader's time by dwelling so long upon it as its extent and importance would otherwise demand.—See Hist. of Charles V., vol. i., note 21. Few leading passages in the monuments of the middle ages, relative to this subject, have escaped the penetrating eye of that historian; and they are arranged so well as to form a comprehensive treatise in small compass. I know not that I could add any much worthy of notice, unless it be the following. In the treaty between Philip Augustus and Richard Cœur de Lion (1194), the latter refused to admit the insertion of an article, that none of the barons of either party should molest the other; lest he should infringe the customs of Poitou and his other dominions, in quibus consuetum erat ab antiquo ut magnates causas proprias invicem gladiis allegarent.—Hoveden, p. 741 (in Saville, Script. Anglic.).

* Du Cange, Dissertation quatrième sur Join ville.

† Mably, l. i., c. 2, note 3. Du Cange, voc. Heribannum, Fredum.

‡ Velly, t. ii., p. 329. Villaret, t. xiv., p. 174–195. Recueil des Historiens, t. xiv., préface, p. 37. The last is a perspicuous account of the royal revenue in the twelfth century. But far the most luminous view of that subject, for the three next ages, is displayed by M. de Pastoret, in his prefaces to the fifteenth and sixteenth volumes of the Ordonnances des Rois

of vacant episcopal sees and other ecclesiastical benefices,* were possessed within their own domains by the great feudatories of the crown. They, I apprehend, contributed nothing to their sovereign; not even those aids which the feudal customs enjoined.†

Exactions from the Jews.

The history of the royal revenue in France is however too important to be slightly passed over. As the necessities of government increased, partly through the love of magnificence and pageantry, introduced by the crusades and the temper of chivalry, partly in consequence of employing hired troops instead of the feudal militia, it became impossible to defray its expenses by the ordinary means. Several devices, therefore, were tried, in order to replenish the exchequer. One of these was by extorting money from the Jews. It is almost incredible to what a length this was carried. Usury, forbidden by law and superstition to Christians, was confined to this industrious and covetous people.‡ It is now no secret, that all regulations interfering with the interest of money render its terms more rigorous and burdensome. The children of Israel grew rich in despite of insult and oppression, and retaliated upon their Christian debtors. If an historian of Philip Augustus may be believed, they possessed almost one half of Paris. Unquestionably they must have had support both at the court and in the halls of justice. The policy of the kings of France was to employ them as a sponge to suck their subjects' money, which they might afterward express with less odium than direct taxation would incur. Philip Augustus released all Christians in his dominions from their debts to the Jews, reserving a fifth part to himself.§ He afterward expelled the whole nation from France. But they appear to have returned again; whether by stealth, or, as is more probable, by purchasing permission. St. Louis twice banished and twice recalled the Jews. A series of alternate persecution and tolerance was borne by this extraordinary people with an invincible perseverance, and a talent of accumulating riches which kept pace with their plunderers, till new schemes of finance supplying the turn, they were finally expelled under Charles VI., and never afterward obtained any legal establishment in France.*

Debasement of the coin.

A much more extensive plan of rapine was carried on by lowering the standard of coin. Originally the pound, a money of account, was equivalent to twenty ounces of silver; and divided into twenty pieces of coin (sous), each equal consequently to nearly three shillings and fourpence of our new English money.† At the revolution, the money of France had been depreciated in the proportion of seventy-three to one, and the sol was about equal to an English half-penny. This was the effect of a long continuance of fraudulent and arbitrary government. The abuse began under Philip I., in 1103, who alloyed his silver coin with a third of copper. So good an example was not lost upon subsequent princes; till under St. Louis, the mark-weight of silver, or eight ounces, was equivalent to fifty sous of the debased coin. Nevertheless these changes seem hitherto to have produced no discontent; whether it were that a people, neither commercial nor enlightened, did not readily perceive their tendency; or, as has been ingeniously conjectured, that these successive diminutions of the standard were nearly counterbalanced by an augmentation in the value of silver, occasioned by the drain of money during the crusades, with which they were about contemporaneous.‡ But the rapacity of Philip the Fair kept no measures with the public; and the mark in his reign had become equal to eight livres, or a hundred and sixty sous of money. Dissatisfaction, and even tumults, arose in consequence, and he was compelled to restore the coin to its standard under St. Louis.§

* The Duke of Burgundy and Count of Champagne did not possess the regale. But it was enjoyed by all the other peers; by the dukes of Normandy, Guienne, and Britany; the counts of Toulouse, Poitou, and Flanders.—Mably, l. iii., c. 4. Recueil des Historiens, t. ii., p. 229, and t. xiv., p. 53. Ordonnances des Rois, t. i., p. 621.

† I have never met with any instance of a relief, aid, or other feudal contribution paid by the vassals of the French crown; but in this negative proposition it is possible that I may be deceived.

‡ The Jews were celebrated for usury as early as the sixth century.—Greg. Turon., l. iv., c. 12, and l. vii., c. 22

§ Rigord. in Du Chesne Hist. Franc. Script., t. v., p. 8

* Villaret, t. ix., p. 433. Metz contained, and I suppose still contains, a great many Jews; but Metz was not part of the ancient kingdom.

† Besides this silver coin, there was a golden sol worth forty pence. Le Blanc thinks the solidi of the Salique-law and capitularies mean the latter piece of money. The denarius, or penny, was worth two sous six deniers of modern French coin

‡ Villaret, t. xiv., p. 198. The price of commodities, he asserts, did not rise till the time of St Louis. If this be said on good authority, it is a remarkable fact; but in England we know very little of prices before that period, and I doubt if their history has been better traced in France.

§ It is curious, and not perhaps unimportant, to learn the course pursued in adjusting payments

His successors practised the same arts of enriching their treasury; under Philip of Valois, the mark was again worth eight livres. But the film had now dropped from the eyes of the people; and these adulterations of money, rendered more vexatious by continued recoinages of the current pieces, upon which a fee was extorted by the moneyers, showed in their true light as mingled fraud and robbery.*

Direct taxation.

These resources of government, however, by no means superseded the necessity of more direct taxation. The kings of France exacted money from the roturiers, and particularly the inhabitants of towns within their domains. In this they only acted as proprietors, or suzerains; and the barons took the same course in their own lands. Philip Augustus first ventured upon a stretch of prerogative, which, in the words of his biographer, disturbed all France. He deprived by force, says Rigord, both his own vassals, who had been accustomed to boast of their immunities, and their feudal tenants, of a third part of their goods.† Such arbitrary taxation of the nobility, who deemed that their military service discharged them from all pecuniary burdens, France was far too aristocratical a country to bear. It seems not to have been repeated; and his successors generally pursued more legitimate courses. Upon obtaining any contribution, it was usual to grant letters patent, declaring that it had been freely given, and should not be turned into precedent in time to come. Several of these letters patent of Philip the Fair are extant, and published in the general collection of ordinances.* But in the reign of this monarch, a great innovation took place in the French constitution, which, though it principally affected the method of levying money, may seem to fall more naturally under the next head of consideration.

Want of supreme legislative authority.

IV. There is no part of the French feudal policy so remarkable as the entire absence of all supreme legislation. We find it difficult to conceive the existence of a political society, nominally one kingdom, and under one head, in which, for more than three hundred years, there was wanting the most essential attribute of government. It will be requisite however, to take this up a little higher, and inquire what was the original legislature of the French monarchy.

Original legislative assemblies of France.

Arbitrary rule, at least in theory, was uncongenial to the character of the northern nations. Neither the power of making laws, nor that of applying them to the circumstances of particular cases, was left at the discretion of the sovereign. The Lombard kings held assemblies every year at Pavia, where the chief officers of the crown and proprietors of lands deliberated upon all legislative measures, in the presence, and, nominally at least, with the consent, of the multitude.† Frequent mention is made of similar public meetings in France by the historians of the Merovingian kings, and still more unequivocally by their statutes.‡ These assemblies have been called parliaments

upon the restoration of good coin, which happened pretty frequently in the fourteenth century, when the States-General, or popular clamour, forced the court to retract its fraudulent policy. Le Blanc has published several ordinances nearly to the same effect. One of Charles VI. explains the method adopted rather more fully than the rest. All debts incurred since the depreciated coin began to circulate were to be paid in that coin, or according to its value. Those incurred previously to its commencement were to be paid according to the value of the money circulating at the time of the contract. Item, que tous les vrais emprunts faits en deniers sans fraude, se payeront en telle monnoye comme l'on aura emprunté, si elle a plein cours au temps du payement, et sinon, ils payeront en monnoye coursable lors selon la valeur et le prix du marc d'or ou d'argent, p. 32.

* Continuator Gul. de Nangis in Spicilegio, t. iii. For the successive changes in the value of French coins, the reader may consult Le Blanc's treatise, or the Ordonnances des Rois; or he may find a summary view of them in Du Cange, v. Moneta. The bad consequences of these innovations are well treated by M. de Pastoret, in his elaborate preface to the sixteenth volume of the Ordonnances des Rois, p. 40.

† Du Chesne, t. v., p. 43

* Fasons scavoir et recognoissons que la derniere subvention que ils nous ont faite (les barons, vassaux et nobles d'Auvergne) de pure grace sans ce que ils y fussent tenus que de grace; et voulons et leur octroyons que les autres subventions que ils nous ont faites ne leur facent nul prejudice, es choses esquelles ils n'étoient tenus, ne par ce nul nouveau droit ne nous soit acquis ne amenuisié.—Ordonnance de 1304, apud Mably, l. iv., c. 3, note 5. See other authorities in the same place.

† Luitprand, king of the Lombards, says that his laws sibi placuisse unà cum omnibus judicibus de Austriæ et Neustriæ partibus, et de Tusciæ finibus, cum reliquis fidelibus meis Langobardis, et omni populo assistente.—Muratori, Dissert. 22.

‡ Mably, l. i., c. 1, note 1. Lindebrog., Codex Legum Antiquarum, p. 363, 369. The following passage, quoted by Mably (c. ii., n. 6) from the preamble of the revised Salique law under Clotaire II. is explicit. Temporibus Clotairii regis unà cum principibus suis, id est 33 episcopis et 34 ducibus et 79 comitibus, *vel* cætero populo constituta est. A remarkable instance of the use of *vel* instead of *et*, which was not uncommon, and is noted by Du Cange under the word Vel. Another proof of it occurs in the very next quotation of Mably from the edict of 615, cum pontificibus, *vel* cum magnis viris optimatibus.

of the Champ de Mars, having originally been held in the month of March. We know very little of their constituent members; but it is probable that every allodial proprietor had a legal right to assist in their deliberations; and at least equally so, that the efficient power was nearly confined to the leading aristocracy. Such, indeed, is the impression conveyed by a remarkable passage of Hincmar, archbishop of Rheims, during the time of Charles the Bald, who has preserved, on the authority of a writer contemporary with Charlemagne, a sketch of the Frankish government under that great prince. Two assemblies (placita) were annually held. In the first, all regulations of importance to the public weal for the ensuing year were enacted; and to this, he says, the whole body of clergy and laity repaired; the greater, to deliberate upon what was fitting to be done; and the less, to confirm by their voluntary assent, not through deference to power, or sometimes even to discuss, the resolutions of their superiors.* In the second annual assembly, the chief men and officers of state were alone admitted to consult upon the most urgent affairs of government. They debated, in each of these, upon certain capitularies, or short proposals, laid before them by the king. The clergy and nobles met in separate chambers, though sometimes united for the purposes of deliberation. In these assemblies, principally, I presume, in the more numerous of the two annually summoned, that extensive body of laws, the capitularies of Charlemagne, were enacted. And though it would contradict the testimony just adduced from Hincmar, to suppose that the lesser freeholders took a very effective share in public counsels, yet their presence, and the usage of requiring their assent, indicate the liberal principles upon which the system of Charlemagne was founded. It is continually expressed in his capitularies, and those of his family, that they were enacted by general consent.* In one of Louis the Debonair, we even trace the first germe of representative legislation. Every count is directed to bring with him to the general assembly twelve Scabini, if there should be so many in his county; or, if not, should fill up the number out of the most respectable persons resident. These Scabini were judicial assessors of the count, chosen by the allodial proprietors.†

Assemblies held by Charlemagne.

The circumstances, however, of the French empire for several subsequent ages were exceedingly adverse to such enlarged schemes of polity. The nobles contemned the imbecile descendants of Charlemagne; and the people, or lesser freeholders, if they escaped absolute villanage, lost their immediate relation to the supreme government in the subordination to their lord established by the feudal law. Yet we may trace the shadow of ancient popular rights in one constitutional function of high importance, the choice of a sovereign. Historians who relate the election of an emperor or king of France, seldom omit to specify the consent of the multitude, as well as of the temporal and spiritual aristocracy; and even in solemn instruments that record such transactions, we find a sort of importance attached to the popular suffrage.‡ It is surely less probable that a

* Consuetudo tunc temporis talis erat, ut non sæpius, sed bis in anno placita duo tenerentur. Unum, quando ordinabatur status totius regni ad anni vertentis spatium; quod ordinatum nullus eventus rerum, nisi sua necessitas, quæ similiter toti regno incumbebat, mutabat. In quo placito generalitas universorum majorum, tam clericorum quam laicorum, conveniebat; seniores, propter consilium ordinandum; minores, propter idem consilium suspiciendum, et interdum pariter tractandum, et non ex potestate, sed ex proprio mentis intellectu vel sententiâ, confirmandum.—Hincmar, Epist. 5, de ordine palatii. I have not translated the word majorum in the above quotation, not apprehending its sense.

* Capitula quæ præterito anno legi Salicæ cum omnium consensu addenda esse censuimus. (A. D. 801.) Ut populus interrogetur de capitulis quæ in lege noviter addita sunt, et postquam omnes consenserint, subscriptiones et manufirmationes suas in ipsis capitulis faciant. (A. D. 813.) Capitularia patris nostri quæ Franci pro lege tenenda judicaverunt. (A. D. 837.) I have borrowed these quotations from Mably, who remarks that the word *populus* is never used in the earlier laws. See too Du Cange, vv. Lex, Mallum, Pactum.

† Vult dominus Imperator ut in tale placitum quale ille nunc jusserit, veniat unusquisque comes, et adducat secum duodecim scabinos si tanti fuerint; sin autem, de melioribus hominibus illius comitatus suppleat numerum duodenarium.—Mably, l. ii., c. ii.

‡ It has been intimated in another place, p. 67, that the French monarchy seems not to have been strictly hereditary under the later kings of the Merovingian race: at least expressions indicating a formal election are frequently employed by historians. Pepin of course came in by the choice of the nation. At his death he requested the consent of the counts and prelates to the succession of his sons (Baluzii Capitularia, p. 187); though they had bound themselves by oath at his consecration never to elect a king out of another family. Ut nun quam de alterius lumbis regem eligere præsumant.—(Formula Consecrationis Pippini in Recueil des Historiens, t. v.) In the instrument of partition by Charlemagne among his descendants, he provides for their immediate succession in absolute terms, without any mention of consent. But in the event of the decease of one of his sons leaving a child *whom the people shall choose*, the other princes were to permit him to reign.—Baluze, p. 440. This

recognition of this elective right should have been introduced as a mere ceremony, than that the form should have survived after length of time and revolutions of government had almost obliterated the recollection of its meaning.

It must, however, be impossible to ascertain even the theoretical privileges of the subjects of Charlemagne, much more to decide how far they were substantial or illusory. We can only assert in general, that there continued to be some mixture of democracy in the French constitution during the reign of Charlemagne and his first successors. The primeval German institutions were not eradicated. In the Capitularies, the consent of the people is frequently expressed. Fifty years after Charlemagne, his grandson, Charles the Bald, succinctly expresses the theory of legislative power. A law, he says, is made by the people's consent and the king's enactment.* It would hardly be warranted by analogy or precedent, to interpret the word people so very narrowly as to exclude any allodial proprietors, among whom, however unequal in opulence, no legal inequality of rank is supposed to have yet arisen.

But by whatever authority laws were enacted, whoever were the constituent members of national assemblies, they ceased to be held in about seventy years from the death of Charlemagne. The latest capitularies are of Carloman, in 882.* From this time there ensues a long blank in the history of French legislation The kingdom was as a great fief, or rather as a bundle of fiefs, and the king little more than one of a number of feudal nobles, differing rather in dignity than in power from some of the rest. The royal council was composed only of barons, or tenants in chief, prelates, and household officers. These now probably deliberated in private, as we hear no more of the consenting multitude. Political functions were not in that age so clearly separated as we are taught to fancy they should be; this council advised the king in matters of government, confirmed and consented to his grants, and judged in all civil and criminal cases, where any peers of their court were concerned.† The great vassals of the crown acted for themselves in their own territories, with the assistance of councils similar to that of the king Such indeed was the symmetry of feudal customs, that the manerial court of every vavassor represented in miniature that of his sovereign.‡

Royal council of the third race

But, notwithstanding the want of any permanent legislation during so long a

repeated more perspicuously in the partition made by Louis I., in 817. Si quis eorum decedens legitimos filios reliquerit, non inter eos potestas ipsa dividatur, sed potius populus pariter conveniens, unum ex iis, quem dominus voluerit, eligat, et hunc senior frater in loco fratris et filii recipiat.—Baluze, p. 577. Proofs of popular consent given to the succession of kings during the two next centuries are frequent, but of less importance on account of the irregular condition of government. Even after Hugh Capet's accession, hereditary right was far from being established. The first six kings of this dynasty procured the *co-optation* of their sons, by having them crowned during their own lives. And this was done without the consent of the chief vassals.—(Recueil des Hist., t. xi., p. 133.) In the reign of Robert it was a great question whether the elder son should be thus designated as heir in preference to his younger brother, whom the queen, Constance, was anxious to place upon the throne. Odolric, bishop of Orleans, writes to Fulbert, bishop of Chartres, in terms which lead one to think that neither hereditary succession nor primogeniture was settled on any fixed principle.—(Id., t. x., p. 504.) And a writer in the same collection, about the year 1000, expresses himself in the following manner: Melius est electioni principis non subscribere, quàm post subscriptionem electum contemnere; in altero enim libertatis amor laudatur, in altero servilis contumacia probro datur. Tres namque generales electiones novimus; quarum una est regis vel imperatoris, altera pontificis, altera abbatis. Et primam quidem facit concordia totius regni; secundam vero unanimitas civium et cleri; tertiam sanius consilium cœnobiticæ congregationis.—(Id., p. 626.) At the coronation of Philip I., in 1059, the nobility and people (milites et populi tam majores quàm minores) testified their consent by crying, Laudamus, volumus, fiat, t xi., p. 33. I suppose, if search were made, that similar testimonies might he found still later; and perhaps hereditary succession cannot be considered as a fundamental law till the reign of Philip Augustus, the era of many changes in the French constitution.

* Lex consensu populi fit, constitutione regis — Recueil des Hist., t. vii., p. 656.

* It is generally said, that the capitularies cease with Charles the Simple, who died in 921. But Baluze has published only two under the name of that prince; the first, a declaration of his queen's jointure; the second, an arbitration of disputes in the church of Tongres; neither surely deserving the appellation of a law.

† Regali potentiâ in nullo abuti volentes, say Hugh Capet, omnia negotia reipublicæ in consultatione et sententiâ fidelium nostrorum disponimus —Recueil des Hist., t. x., p. 392. The subscriptions of these royal counsellors were necessary to the confirmation. or, at least, the authentication o charters. as was also the case in England, Spain and Italy. This practice continued in England till the reign of John.

The Curia regis seems to have differed only in name from the Concilium regium. It is also called Curia parium, from the equality of the barons who composed it, standing in the same feudal degree of relation to the sovereign. But we are not yet arrived at the subject of jurisdiction, which it is very difficult to keep distinct from what is immediately before us.

‡ Recueil des Hist., t xi., p. 300, and preface. p 179. Vaissette, His de Languedoc, t. ii., p 508

period, instances occur, in which the kings of France appear to have acted with the concurrence of an assembly, more numerous and more particularly summoned than the royal council. At such a congress, held in 1146, the crusade of Louis VII. was undertaken.* We find also an ordinance of the same prince in some collections, reciting that he had convoked a general assembly at Soissons, where many prelates and barons then present had consented and requested that private wars might cease for the term of ten years.† The famous Saladine tithe was imposed upon lay as well as ecclesiastical revenues by a similar convention in 1188.‡ And when Innocent IV., during his contest with the Emperor Frederick, requested an asylum in France, St. Louis, though much inclined to favour him, ventured only to give a conditional permission, provided it were agreeable to his barons, whom, he said, a king of France was bound to consult in such circumstances. Accordingly he assembled the French barons, who unanimously refused their consent.§

Occasional assemblies of barons.

It was the ancient custom of the kings of France as well as of England, and indeed of all those vassals who affected a kind of sovereignty, to hold general meetings of their barons, called Cours Plénières or Parliaments, at the great festivals of the year. These assemblies were principally intended to make a display of magnificence, and to keep the feudal tenants in good-humour; nor is it easy to discover that they passed in any thing but pageantry.‖ Some respectable antiquaries have however been of opinion, that affairs of state were occasionally discussed in them; and this is certainly by no means inconsistent with probability, though not sufficiently established by evidence.*

Cours Plénières.

Excepting a few instances, most of which have been mentioned, it does not appear that the kings of the house of Capet acted according to the advice and deliberation of any national assembly, such as assisted the Norman sovereigns of England; nor was any consent required for the validity of their edicts, except that of the ordinary council, chiefly formed of their household officers and less powerful vassals. This is at first sight very remarkable. For there can be no doubt that the government of Henry I. or Henry II. was incomparably stronger than that of Louis VI. or Louis VII. But this apparent absoluteness of the latter was the result of their real weakness and the disorganization of the monarchy. The peers of France were infrequent in their attendance upon the king's council, because they denied its coercive authority. It was a fundamental principle, that every feudal tenant was so far sovereign within the limits of his fief, that he could not be bound by any law without his consent. The king, says St. Louis in his Establishments, cannot make proclamation, that is, declare any new law, in the territory of a baron without his consent, nor can the baron do so in that of a vavassor.† Thus, if legislative power be essential to sovereignty, we cannot in strictness assert the King of France to have been sovereign beyond the extent of his domanial territory. Nothing can more strikingly illustrate the dissimilitude of the French and English constitutions of government, than the sentence above cited from the code of St. Louis.

Limitations of royal power in legislation

Upon occasions, when the necessity of common deliberation, or of giving to new provisions more extensive scope than the limits of a single fief, was too glaring to be overlooked, congresses of neighbouring lords met in order to agree upon resolutions, which each of them undertook to execute within his own domains. The king was sometimes a contracting party, but without any coercive authority over the rest. Thus we have what is called an ordinance, but, in reality, an agree

Substitutes for legislative authority.

* Velly, t. iii., p. 119. This, he observes, is the first instance in which the word parliament is used for a deliberative assembly.

† Ego Ludovicus Dei gratiâ Francorum rex, ad reprimendum fervorem malignantium, et compescendum violentas prædorum manus, postulationibus cleri et assensu baroniæ, toti regno pacem constituimus. Eâ causâ, anno Incarnati Verbi 1155, iv idus Jun. Suessionense concilium celebre adunavimus, et affuerunt archiepiscopi Remensis, Senonensis et eorum suffraganei; item barones, comes Flandrensis, Trecensis, et Nivernensis et quamplures alii, et dux Burgundiæ. Ex quorum beneplacito ordinavimus a veniente Paschâ ad decem annos, ut omnes ecclesiæ regni et omnes agricolæ etc. pacem habeant et securitatem —— In pacem istam juraverunt Dux Burgundiæ, Comes Flandriæ, —— et reliqui barones qui aderant.

This ordinance is published in Du Chesne, Script. Rerum. Gallicarum, t. iv., and in Recueil les Histor., t. xiv., p. 387; but not in the general collection.

‡ Velly, t. iii., p. 315. § Ibid., t. iv., p. 306.

‖ Du Cange, Dissert. 5, sur Joinville.

* Mém. de l'Acad. des Inscript., t. xli. Recueil des Hist., t. xi., préface, p. 155.

† Ne li Rois ne puet mettre ban en la terre au baron sans son assentment, ne li Bers [Baron] ne puet mettre ban en la terre au vavasor.—Ordonnances des Rois, t. i., p. 176

ment between the king (Philip Augustus), the Countess of Troyes or Champagne, and the Lord of Dampierre (Count of Flanders), relating to the Jews in their domains; which agreement or ordinance, it is said, should endure "until ourselves, and the Countess of Troyes, and Guy de Dampierre, who make this contract, shall dissolve it with the consent of such of our barons as we shall summon for that purpose."*

Ecclesiastical councils were another substitute for a regular legislature; and this defect in the political constitution rendered their encroachments less obnoxious, and almost unavoidable. That of Troyes in 878, composed perhaps in part of laymen, imposed a fine upon the invaders of church property.† And the council of Toulouse, in 1229, prohibited the erection of any new fortresses, or the entering into any leagues, except against the enemies of religion; and ordained that judges should administer justice gratuitously, and publish the decrees of the council four times in the year.‡

First measures of general legislation.

The first unequivocal attempt, for it was nothing more, at general legislation, was under Louis VIII., in 1223, in an ordinance, which, like several of that age, relates to the condition and usurious dealings of the Jews. It is declared in the preamble to have been enacted, per assensum archiepiscoporum, episcoporum, comitum, baronum, et militum regni Franciæ, qui Judæos habent, et qui Judæos non habent. This recital is probably untrue, and intended to cloak the bold innovation contained in the last clause of the following provision: Sciendum, quod nos et barones nostri statuimus et ordinavimus de statu Judæorum quod nullus nostrûm alterius Judæos recipere potest vel retinere; *et hoc intelligendum est tam de his qui stabilimentum juraverint, quam de illis qui non juraverint.*§ This was renewed with some alteration in 1230, de communi consilio baronum nostrorum.‖

But whatever obedience the vassals of the crown might pay to this ordinance, their original exemption from legislative control remained, as we have seen, unimpaired at the date of the Establishments of St. Louis, about 1269; and their ill judged confidence in this feudal privilege still led them to absent themselves from the royal council. It seems impossible to doubt that the barons of France might have asserted the same right, which those of England had obtained, that of being duly summoned by special writ, and thus have rendered their consent necessary to every measure of legislation. But the fortunes of France were different. The Establishments of St Louis are declared to be made "par grand conseil de sages hommes et de bons clers," but no mention is made of any consent given by the barons; nor does it often, if ever, occur in subsequent ordinances of the French kings.

Legislative power of the crown increases

The nobility did not long continue safe in their immunity from the king's legislative power. In the ensuing reign of Philip the Bold, Beaumanoir lays it down, though in very moderate and doubtful terms, that "when the king makes any ordinance specially for his own domains, the barons do not cease to act in their territories according to the ancient usage but, when the ordinance is general, it ought to run through the whole kingdom and we ought to believe that it is made with good advice, and for the common benefit."* In another place he says with more positiveness, that "the king is sovereign above all, and has of right the general custody of the realm, for which cause he may make what ordinances he pleases for the common good, and what he ordains ought to be observed; nor is there any one so great but may be drawn into the king's court for default of right or for false judgment, or in matters that affect the sovereign."† These latter words give us a clew to the solution of the problem, by what means an absolute monarchy was established in France. For though the barons would have been little influenced by the authority of a lawyer like Beaumanoir, they were much less able to resist the coercive logic of a judicious tribunal. It was in vain for them to deny the obligation of royal ordinances within their own domains, when they were compelled to acknowledge the jurisdiction of the parliament of Paris, which took a very different view of their privileges. This progress of the royal jurisdiction will fall under the next topic of inquiry, and is only now hinted at, as the probable means of confirming the absolute legislative power of the French crown.

Causes of this.

* Quousque nos, et comitissa Trecensis, et Guido de Domnâ petrâ, qui hoc facimus, per nos, et illos de baronibus nostris, quos ad hoc vocare volumus, illud diffaciamus.—Ordonnances des Rois, t. i., p. 39. This ordinance bears no date, but it was probably between 1218 and 1223, the year of Philip's death.

† Vaissette, Hist. de Languedoc, t. ii., p. 6.

‡ Velly, t. iv., p. 132.

§ Ordonn. des Rois, t. i., p. 47. ‖ Id., p. 53.

* Coûtumes de Beauvoisis, c. 48. † C. 34

The ultimate source, however, of this increased authority, will be found in the commanding attitude assumed by the kings of France from the reign of Philip Augustus, and particularly in the annexation of the two great fiefs of Normandy and Toulouse. Though the châtelains and vavassors who had depended upon those fiefs before their reunion were, agreeably to the text of St. Louis's ordinance, fully sovereign, in respect of legislation, within their territories, yet they were little competent, and perhaps little disposed, to offer any opposition to the royal edicts; and the same relative superiority of force, which had given the first kings of the house of Capet a tolerably effective control over the vassals dependant on Paris and Orleans, while they hardly pretended to any over Normandy and Toulouse, was now extended to the greater part of the kingdom. St. Louis, in his scrupulous moderation, forbore to avail himself of all the advantages presented by the circumstances of his reign; and his Establishments bear testimony to a state of political society, which, even at the moment of their promulgation, was passing away. The next thirty years after his death, with no marked crisis, and with little disturbance, silently demolished the feudal system, such as had been established in France during the dark confusion of the tenth century. Philip the Fair, by help of his lawyers and his financiers, found himself, at the beginning of the fourteenth century, the real master of his subjects.

There was however one essential privilege which he could not hope to overturn by force, the immunity from taxation enjoyed by his barons. This, it will be remembered, embraced the whole extent of their fiefs, and their tenantry of every description; the king having no more right to impose a tallage upon the demesne towns of his vassals, than upon themselves. Thus his resources, in point of taxation, were limited to his own domains; including certainly, under Philip the Fair, many of the noblest cities in France, but by no means sufficient to meet his increasing necessities. We have seen already the expedients employed by this rapacious monarch; a shameless depreciation of the coin, and, what was much more justifiable, the levying taxes within the territories of his vassals by their consent. Of these measures, the first was odious, the second slow and imperfect. Confiding in his sovereign authority, though recently, yet almost completely established, and little apprehensive of the feudal principles, already grown obsolete and discountenanced, he was bold enough to make an extraordinary innovation in the French constitution. This was the convocation of the States General, a representative body, composed of the three orders of the nation.* They were first

Convocation of the States General by Philip the Fair.

* It is almost unanimously agreed among French writers, that Philip the Fair first introduced a representation of the towns into his national assembly of States General. Nevertheless, the Chronicles of St. Denis, and other historians of rather a late date, assert that the deputies of towns were present at a parliament in 1241, to advise the king what should be done in consequence of the Count of Angoulême's refusal of homage.—Boulainvilliers, Hist. de l'Ancien Gouvernement de France, t. ii., p. 20. Villaret, t. ix., p. 125. The latter pretends even that they may be traced a century farther back: on voit déjà les gens de bonnes villes assister aux états de 1145, ibid. But he quotes no authority for this; and his vague language does not justify us in supposing that any representation of the three estates, properly so understood, did, or indeed could, take place in 1145, while the power of the aristocracy was unbroken, and very few towns had been incorporated. If it be true that the deputies of some royal towns were summoned to the parliament of 1241, the conclusion must not be inferred, that they possessed any consenting voice, nor perhaps that they formed, strictly speaking, an integrant portion of the assembly. There is reason to believe, that deputies from the royal burghs of Scotland occasionally appeared at the bar of parliament long before they had any deliberative voice. —Pinkerton's Hist. of Scotland, vol. i., p. 371.

An ordinance of St. Louis, quoted in a very respectable book, Vaissette's History of Languedoc, iii., p. 480, but not published in the Recueil des Ordonnances, not only shows the existence, in one instance, of a *provincial* legislative assembly, but is the earliest proof perhaps of the tiers état appearing as a constituent part of it. This relates to the seneschaussée, or county, of Beaucaire in Languedoc, and bears date in 1254. It provides, that if the seneschal shall think fit to prohibit the export of merchandise, he shall summon some of the prelates, barons, knights, and inhabitants of the chief towns, by whose advice he shall issue such prohibition, and not recall it, when made, without like advice. But though it is interesting to see the progressive importance of the citizens of towns, yet this temporary and insulated ordinance is not of itself sufficient to establish a constitutional right. Neither do we find therein any evidence of representation; it rather appears that the persons assisting in this assembly were *notables*, selected by the seneschal.

I am not aware of any instance of regular provincial estates being summoned with such full powers, although it was very common in the fourteenth century to ask their consent to grants of money, when the court was unwilling to convoke the States General. Yet there is a passage in a book of considerable credit, the Grand Customary, or Somme Rurale of Bouteiller, which seems to render general the particular case of the seneschaussée of Beaucaire. Bouteiller wrote about the end of the fourteenth century. The great courts summoned from time to time by the baillis and seneschals were called assizes. Their usual function

convened in 1302, in order to give more weight to the king's cause, in his great quarrel with Boniface VIII.; but their earliest grant of a subsidy is in 1314. Thus the nobility surrendered to the crown their last privilege of territorial independence; and having first submitted to its appellant jurisdiction over their tribunals, next to its legislative supremacy. now suffering their own dependants to become, as it were, immediate, and a third estate to rise up almost co-ordinate with themselves, endowed with new franchises, and bearing a new relation to the monarchy.

It is impossible not to perceive the motives of Philip in imbodying the deputies of towns as a separate estate in the national representation. He might, no question, have convoked a parliament of his barons, and obtained a pecuniary contribution, which they would have levied upon their burgesses and other tenants. But besides the ulterior policy of diminishing the control of the barons over their dependants, he had good reason to expect more liberal aid from the immediate representatives of the people, than through the concession of a dissatisfied aristocracy. He must be blind indeed, says Pasquier, who does not see that the roturier was expressly summoned to this assembly, contrary to the ancient institutions of France, for no other reason than that, inasmuch as the burden was intended to fall principally upon him, he might engage himself so far by promise, that he could not afterward murmur or become refractory.* Nor would I deny the influence of more generous principles; the example of neighbouring countries, the respect due to the progressive civilization and opulence of the towns, and the application of that ancient maxim of the northern monarchies, that whoever was elevated to the perfect dignity of a freeman, acquired a claim to participate in the imposition of public tributes

Rights of the States General as to taxation

It is very difficult to ascertain the constitutional rights of the States General, claimed or admitted, during forty years after their first convocation. If indeed we could implicitly confide in an historian of the sixteenth century, who asserts that Louis Hutin bound himself and his successors not to levy any tax without the consent of the three estates, the problem would find its solution.* This ample charter does not appear in the French archives; and though by no means to be rejected on that account, when we consider the strong motives for its destruction, cannot fairly be adduced as an authentic fact. Nor can we altogether infer, perhaps, from the collection of ordinances, that the crown had ever intentionally divested itself of the right to impose tallages on its domanial tenants. All others, however, were certainly exempted from that prerogative; and there seems to have been a general sentiment, that no tax whatever could be levied without free consent of the estates.† Louis Hutin, in a charter granted to the nobles and burgesses of Picardy, promises to abolish the unjust taxes (maltotes) imposed by his father;‡ and in another instrument, called the charter of Normandy, declares that he renounces for himself and his successors all undue tallages and exactions, except in case of evident utility.§ This exception is doubtless of perilous ambiguity; yet, as the charter was literally wrested from the king by an insurrectionary league, it might be expected that the same spirit would rebel against his royal interpretation of state-necessity. His successor, Philip the Long, tried the experiment of a gabelle, or excise upon salt. But it produced so much discontent, that he was compelled to assemble the States General, and to publish an ordinance declaring that the impost was not designed to be perpetual, and that, if

was to administer justice, especially by way of appeal, and perhaps to redress abuses of inferior officers. But he seems to give them a more extended authority. En assise, he says, appellés les sages et seigneurs du pais, peuvent estre mises sus nouvelles constitutions, et ordonnances sur le pais et destruites autre que seront grevables, *et un autre temps non*, et doivent etre publieés, afin que nul ne les pueust ignorer, et lors ne les peut ne doit jamais nul redarguer.—Mém. de l'Acad. des Inscriptions, t. xxx., p. 606.

The taille was assessed by respectable persons chosen by the advice of the parish priests and others, which gave the people a sort of share in the *repartition*, to use a French term, of public burdens; a matter of no small importance, where a tax is levied on visible property.—Ordonnances des Rois, p. 291. Beaumanoir, p. 269. This however continued, I believe, to be the practice in later times; I know it is so in the present system of France; and is perfectly distinguishable from a popular consent to taxation.

* Recherches de la France, l. ii., c. 7.

* Boulainvilliers (Hist. de l'Anc. Gouvernement t. ii., p. 128) refers for this to Nicholas Gilles, a chronicler of no great repute.

† Mably (Observat. sur l'Hist. de France, l. v., c. 1) is positive against the right of Philip the Fair and his successors to impose taxes. Montlosier (Monarchie Française, t. i., p. 202) is of the same opinion. In fact, there is reason to believe, that the kings in general did not claim that prerogative absolutely, whatever pretexts they might set up for occasional stretches of power.

‡ Ordonnances des Rois, t. i., p. 566.

§ Idem, t. i., p. 589.

a sufficient supply for the existing war could be found elsewhere, it should instantly determine.* Whether this was done, I do not discover; nor do I conceive that any of the sons of Philip the Fair, inheriting much of his rapacity and ambition, abstained from extorting money without consent. Philip of Valois renewed and augmented the duties on salt by his own prerogative, nor had the abuse of debasing the current coin been ever carried to such a height as during his reign, and the first years of his successor. These exactions, aggravated by the smart of a hostile invasion, produced a very remarkable concussion in the government of France.

States General of 1355 and 1356.

I have been obliged to advert, in another place, to the memorable resistance made by the Estates General of 1355 and 1356 to the royal authority, on account of its inseparable connexion with the civil history of France.† In the present chapter, the assumption of political influence by those assemblies deserves particular notice. Not that they pretended to restore the ancient constitution of the northern nations, still flourishing in Spain and England, the participation of legislative power with the crown. Five hundred years of anarchy and ignorance had swept away all remembrance of those general diets, in which the capitularies of the Carlovingian dynasty had been established by common consent. Charlemagne himself was hardly known to the French of the fourteenth century, except as the hero of some silly romance or ballad. The States General remonstrated, indeed, against abuses, and especially the most flagrant of all, the adulteration of money; but the ordinance granting redress emanated altogether from the king, and without the least reference to their consent, which sometimes appears to be studiously omitted.‡ But the privilege upon which the states under John solely relied for securing the redress of grievances, was that of granting money, and of regulating its collection. The latter, indeed, though for convenience it may be devolved upon the executive government, appears to be incident to every assembly in which the right of taxation resides. That, accordingly, which met in 1355 nominated a committee, chosen out of the three orders, which was to sit after their separation, and which the king bound himself to consult, not only as to the internal arrangements of his administration, but upon every proposition of peace or armistice with England. Deputies were despatched into each district, to superintend the collection, and receive the produce of the subsidy granted by the states.* These assumptions of power would not long, we may be certain, have left the sole authority of legislation in the king, and might perhaps be censured as usurpation, if the peculiar emergency in which France was then placed did not furnish their defence. But, if it be true that the kingdom was reduced to the utmost danger and exhaustion, as much by malversation of its government as by the armies of Edward III., who shall deny to its representatives the rights of ultimate sovereignty, and of suspending at least the royal prerogatives, by the abuse of which they were falling into destruction?† I confess that it is exceedingly difficult, or perhaps impracticable, with such information as we possess, to decide upon the motives and conduct of the States General, in their several meetings before and after the battle of Poitiers. Arbitrary power prevailed; and its opponents became, of course, the theme of obloquy with modern historians. Froissart, however, does not seem to impute any fault to these famous assemblies of the States General; and still less a more contemporary historian, the anonymous continuator of Nangis. Their notices, however, are very slight; and our chief knowledge of the parliamentary history of France, if I may employ the expression, must be collected from the royal ordinances made upon these occasions, or from unpublished accounts of their

* Ordonnances des Rois, t. i., p. 679.

† Chap. i., p. 42.

‡ The proceedings of States General held under Philip IV. and his sons have left no trace in the French statute-book. Two ordinances alone, out of some hundred enacted by Philip of Valois, appear to have been founded upon their suggestions.

It is absolutely certain that the States General of France had at no period, and in no instance, a co-ordinate legislative authority with the crown, or even a consenting voice. Mably, Boulainvilliers, and Montlosier, are as decisive on this subject as the most courtly writers of that country. It follows as a just consequence, that France never possessed a free constitution; nor had the monarchy any limitations in respect of enacting laws, save those which, until the reign of Philip the Fair, the feudal principles had imposed

* Ordonnances des Rois, t. iii., p. 21, and préface, p. 42. This preface by M. Sécousse, the editor, gives a very clear view of the general and provincial assemblies held in the reign of John. Boulainvilliers, Hist. de l'Anc. Gouvernement de France, t. ii., or Villaret, t. ix., may be perused with advantage.

† The second continuator of Nangis in the Spicilegium dwells on the heavy taxes, diminution of money, and general oppressiveness of government in this age. t. iii., p. 108.

transactions. Some of these, which are quoted by the later French historians, are of course inaccessible to a writer in this country. But a manuscript in the British Museum, containing the early proceedings of that assembly which met in October, 1356, immediately after the battle of Poitiers, by no means leads to an unfavourable estimate of its intentions.* The tone of their representations to the Duke of Normandy (Charles V., not then called dauphin) is full of loyal respect; their complaints of bad administration, though bold and pointed, not outrageous; their offers of subsidy liberal. The necessity of restoring the coin is strongly represented, as the grand condition upon which they consented to tax the people, who had been long defrauded by the base money of Philip the Fair and his successors.†

But whatever opportunity might now be afforded for establishing a just and free constitution in France was entirely lost. [A. D. 1357.] Charles inexperienced and surrounded by evil counsellors, thought the States General inclined to encroach upon his rights, of which, in the best part of his life, he was always abundantly careful. He dismissed therefore the assembly, and had recourse to the easy but ruinous expedient of debasing the coin. This led to seditions at Paris, by which his authority and even his life were endangered. In February, 1357, three months after the last meeting had been dissolved, he was obliged to convoke the states again, and to enact an ordinance conformable to the petitions tendered by the former assembly.* This contained many excellent provisions, both for the redress of abuses, and the vigorous prosecution of the war against Edward; and it is difficult to conceive, that men who advised measures so conducive to the public weal, could have been the blind instruments of the King of Navarre. But this, as I have already observed, is a problem in history that we cannot hope to resolve. It appears, however, that in a few weeks after the promulgation of this ordinance, the proceedings of the reformers fell into discredit, and their commission of thirty-six, to whom the collection of the new subsidy, the redress of grievances, and, in fact, the whole administration of government, had been intrusted, became unpopular. The subsidy produced much less than they had led the people to expect; briefly, the usual consequence of democratical emotions in a monarchy took place. Disappointed by the failure of hopes unreasonably entertained, and improvidently encouraged, and disgusted by the excesses of the violent demagogues, the nation, especially its privileged classes, who seem to have concurred in the original proceedings of the States General, attached themselves to the party of Charles, and enabled him to quell opposition by force.† Marcel, provost of the traders, a municipal magistrate of Paris, detected in the overt execution of a traitorous conspiracy with the King of Navarre, was put to death by a private hand. Whatever there had been of real patriotism in the States General, artfully confounded, according to the practice of

Troubles at Paris

* Cotton MSS. Titus, t. xii., fol. 58–74. This manuscript is noticed, as an important document, in the preface to the third volume of Ordonnances, p. 48, by M. Sécousse, who had found it mentioned in the Bibliothèque Historique of Le Long, No. 11,242. No French antiquary appears, at least before that time, to have seen it; but Boulainvilliers conjectured that it related to the assembly of states in February, 1356 (1357), and M. Sécousse supposed it rather to be the original journal of the preceding meeting in October, 1356, from which a copy, found among the manuscripts of Dupuy, and frequently referred to by Sécousse himself in his preface, had been taken. M. Sécousse was perfectly right in supposing the manuscript in question to relate to the proceedings of October, and not of February; but it is not an original instrument. It forms part of a small volume written on vellum, and containing several other treatises. It seems, however, as far as I can judge, to be another copy of the account which Dupuy possessed, and which Sécousse so often quotes, under the name of Procès-verbal.

† Et estoit et est l'entente de ceulx qui a la ditte convocation estoient que quelconque ottroy ou ayde qu'ils feissent, ils eussent bonne monnoye et estable selon l'advis des trois estats—et que les chartres et lettres faites pour les reformations du royaume par le roy Philippe le bel, et toutes celles qui furent faites par le roy notre seigneur qui est a present fussent confirmées enterinées tenues et gardées de point en point; et toutes les aides quelconques qui faites soient fussent recues et distribuées par ceulx qui soient a ce commis par les trois estats, et autorisées par M. le Duc et sur certaines autres conditions et modifications justes et raissonables et prouffitables et semble que ceste aide eust été moult grant et moult prouffitable, et trop plus que aides de fait de monnoye. Car elle se feroit de volonté du peuple et consentement commun selon Dieu et selon conscience: Et le prouffit que on prent et veult on prendre sur le fait de la monnoye duquel on veult faire le fait de la guerre, et ce soit a la destruction et a esté au temps passé du roy et du royaume et des subjets; Et si se destruit le billon tant par fontures et blanchis comme autrement, ne le fait ne peust durer longuement qu'il ne vienne à destruction si on continue longuement; Et si est tout certain que les gens d'armes ne vouldroient estre contens de leurs gaiges par foible monnoye, &c

* Ordonnances des Rois, t. iii., p. 121.

† Discordiâ motâ, illi tres status ab incepto proposito cessaverunt. Ex tunc enim regni negotis male ire, &c.—Continuator Gul. de Nangis in Spicilegio, t. iii., p. 115.

courts, with these schemes of disaffected men, shared in the common obloquy; whatever substantial reforms had been projected, the government threw aside as seditious innovations. Charles, who had assumed the title of regent, found in the States General assembled at Paris in 1359, a very different disposition from that which their predecessors had displayed, and publicly restored all counsellors whom in the former troubles he had been compelled to discard. Thus the monarchy resettled itself on its ancient basis; or, more properly, acquired additional stability.*

Taxes imposed by John and Charles V.

Both John, after the peace of Bretigni, and Charles V. imposed taxes without consent of the States General.† The latter indeed hardly ever convoked that assembly. [A. D. 1380.] Upon his death the contention between the crown and representative body was renewed, and in the first meeting held after the accession of Charles VI. the government was compelled to revoke all taxes illegally imposed since the reign of Philip IV. This is the most remedial ordinance, perhaps, in the history of French legislation. "We will, ordain, and grant," says the king, "that the aids, subsidies, and impositions, of whatever kind, and however imposed, that have had course in the realm since the reign of our predecessor Philip the Fair, shall be repealed and abolished; and we will and decree, that by the course which the said impositions have had, we or our successors shall not have acquired any right, nor shall any prejudice be wrought to our people, nor to their privileges and liberties, which shall be re-established in as full a manner as they enjoyed them in the reign of Philip the Fair, or at any time since; and we will and decree, that if any thing has been done contrary to them since that time to the present hour, neither we nor our successors shall take any advantage therefrom."‡ If circumstances had turned out favourably for the cause of liberty this ordinance might have been the basis of a free constitution, in respect at least of immunity from arbitrary taxation. But the coercive measures of the court and tumultuous spirit of the Parisians produced an open quarrel, in which the popular party met with a decisive failure.

Remedial ordinance of Charles VI.

It seems indeed impossible, that a number of deputies, elected merely for the purpose of granting money, can possess that weight, or be invested in the eyes of their constituents with that awfulness of station, which is required to withstand the royal authority. The States General had no right of redressing abuses, except by petition; no share in the exercise of sovereignty, which is inseparable from the legislative power. Hence, even in their proper department of imposing taxes, they were supposed incapable of binding their constituents without their specific assent. Whether it were the timidity of the deputies, or false notions of freedom, which produced this doctrine, it was evidently repugnant to the stability and dignity of a representative assembly. Nor was it less ruinous in practice than mistaken in theory. For as the necessary subsidies, after being provisionally granted by the states, were often rejected by their electors, the king found a reasonable pretence for dispensing with the concurrence of his subjects when he levied contributions upon them.

States General under Charles VII.

The States General were convoked but rarely under Charles VI. and VII., both of whom levied money without their concurrence. Yet there are remarkable testimonies under the latter of these princes that the sanction of national representatives was still esteemed strictly requisite to any ordinance imposing a general tax, however the emergency of circumstances might excuse a more arbitrary procedure. Thus Charles VII., in 1436, declares that he has set up again the aids which had been previously abolished *by the consent of the three estates.** And in the important edict establishing the companies of ordonnance, which is recited to be done by the advice and counsel of the States General assembled at Orleans, the forty-first section appears to bear a necessary construction, that no tallage could lawfully be imposed without such consent.† It is maintained indeed by some writers, that

* A very full account of these transactions is given by Sécousse, in his History of Charles the Bad, p. 107, and in his preface to the third volume of the Ordonn. des Rois. The reader must make allowance for the usual partialities of a French historian, where an opposition to the reigning prince is his subject. A contrary bias is manifested by Boulainvilliers and Mably, whom, however, it is well worth while to hear.

† Mably, l. v., c. 5, note 5.

‡ Ordonnances des Rois, t. vi., p. 564. The ordonnance is long, containing frequent repetitions, and a great redundance of words, intended to give more force or at least solemnity.

* Ordonnances des Rois, t. xiii., p. 211.

† Ibid., p. 312. Boulainvilliers mentions other instances, where the states granted money during this reign, t. iii., p. 70.

the perpetual taille established about the same time was actually granted by these states of 1439, though it does not so appear upon the face of any ordinance * And certainly this is consonant to the real and recognised constitution of that age.

But the crafty advisers of courts in the fifteenth century, enlightened by experience of past dangers, were averse to encountering these great political masses, from which there were, even in peaceful times, some disquieting interferences, some testimonies of public spirit and recollections of liberty to apprehend. The kings of France, indeed, had a resource, which generally enabled them to avoid a convocation of the States General, without violating the national franchises. From provincial assemblies, composed of the three orders, they usually obtained more money than they could have extracted from the common representatives of the nation, and heard less of remonstrance and demand.† Languedoc in particular had her own assembly of states, and was rarely called upon to send deputies to the general body, or representatives of what was called the Languedoil. But Auvergne, Normandy, and other provinces belonging to the latter division, had frequent convocations of their respective estates, during the intervals of the States General; intervals, which by this means were protracted far beyond that duration to which the exigences of the crown would otherwise have confined them.‡ This was one of the essential differences between the constitutions of France and England, and arose out of the original disease of the former monarchy, the distraction and want of unity consequent upon the decline of Charlemagne's family, which separated the different provinces in respect of their interests and domestic government from each other.

Provincial states.

But the formality of consent, whether by general or provincial states, now ceased to be reckoned indispensable. The lawyers had rarely seconded any efforts to restrain arbitrary power: in their hatred of feudal principles, especially those of territorial jurisdiction, every generous sentiment of freedom was proscribed; or if they admitted that absolute prerogative might require some checks, it was such only as themselves, not the national representatives, should impose. Charles VII. levied money by his own authority Louis XI. carried this encroachment to the highest pitch of exaction. It was the boast of courtiers, that he first released the kings of France from dependance (hors de page), or, in other words, that he effectually demolished those barriers, which, however imperfect and ill-placed, had imposed some impediment to the establishment of despotism.*

Taxes of Louis XI.

The exactions of Louis, however, though borne with patience, did not pass for legal with those upon whom they pressed. Men still remembered their ancient privileges, which they might see with mortification well preserved in England. "There is no monarch or lord upon earth (says Philip de Comines, himself bred in courts), who can raise a farthing upon his subjects, beyond his own domains, without their free concession, except through tyranny and violence. It may be objected that in some cases there may not be time to assemble them, and that war will bear no delay; but I reply (he proceeds), that such haste ought not to be made, and there will be time enough; and I tell you that princes are more powerful, and more dreaded by their enemies, when they undertake any thing with the consent of their subjects."†

The States General met but twice during the reign of Louis XI., and on neither occasion for the purpose of granting money. But an assembly in the first year of Charles VIII., the States of Tours, in 1484, is too important to be overlooked, as it marks the last struggle of the French nation by its legal representatives for immunity from arbitrary taxation.

States General of Tours in 1484.

A warm contention arose for the regency upon the accession of Charles VIII., between his aunt, Anne de Beaujeu, whom the late king had appointed by testament, and the princes of the blood, at the head of whom stood the Duke of Orleans, afterward Louis XII. The latter combined to demand a convocation

* Bréquigny, préface au treizième tome des Ordonnances.—Boulainvilliers, t. iii., p. 108

† Villaret, t. xi., p. 270.

‡ Ordonnances des Rois, t. iii., préface

* The preface to the sixteenth volume of Ordonnances, before quoted, displays a lamentable picture of the internal situation of France in consequence of excessive taxation, and other abuses. These evils, in a less aggravated degree, continued ever since to retard the improvement, and diminish the intrinsic prosperity, of a country so extraordinarily endowed with natural advantages. Philip de Comines was forcibly struck with the different situation of England and the Netherlands. And Sir John Fortescue has a remarkable passage on the poverty and servitude of the French commons contrasted with English freemen.—Difference of limited and absolute monarchy, p. 17

† Mém. de Comines, l. iv., c. 19

of the States General, which accordingly took place. The king's minority and the factions at court seemed no unfavourable omens for liberty But a scheme was artfully contrived, which had the most direct tendency to break the force of a popular assembly. The deputies were classed in six nations, who debated in separate chambers, and consulted each other only upon the result of their respective deliberations. It was easy for the court to foment the jealousies natural to such a partition. Two nations, the Norman and Burgundian, asserted that the right of providing for the regency devolved, in the king's minority, upon the States General; a claim of great boldness, and certainly not much founded upon precedents. In virtue of this, they proposed to form a council, not only of the princes, but of certain deputies, to be elected by the six nations who composed the states. But the other four, those of Paris, Aquitaine, Languedoc, and Languedoil (which last comprised the central provinces), rejected this plan, from which the two former ultimately desisted, and the choice of counsellors was left to the princes.

A firmer and more unanimous spirit was displayed upon the subject of public reformation. The tyranny of Louis XI. had been so unbounded, that all ranks agreed in calling for redress, and the new governors were desirous, at least by punishing his favourites, to show their inclination towards a change of system. They were very far, however, from approving the propositions of the States General. These went to points which no court can bear to feel touched, though there is seldom any other mode of redressing public abuses; the profuse expense of the royal household, the number of pensions and improvident grants, the excessive establishment of troops. The states explicitly demanded that the taille and all other arbitrary imposts should be abolished; and that from thenceforward, "according to the natural liberty of France," no tax should be levied in the kingdom without the consent of the states. It was with great difficulty, and through the skilful management of the court, that they consented to the collection of the taxes payable in the time of Charles VII., with the addition of one fourth, as a gift to the king upon his accession. This subsidy they declare to be granted "by way of gift and concession, and not otherwise, and so as no one should from thenceforward call it a tax, but a gift and concession." And this was only to be in force for two years, after which they stipulated that another meeting should be convoked. But it was little likely that the government would encounter such a risk; and the princes, whose factious views the states had by no means seconded, felt no temptation to urge again their convocation. No assembly in the annals of France seems, notwithstanding some party selfishness arising out of the division into nations, to have conducted itself with so much public spirit and moderation; nor had that country perhaps ever so fair a prospect of establishing a legitimate constitution.*

Successive changes in the judicial polity of France

V. The right of jurisdiction has undergone changes in France and in the adjacent countries, still more remarkable than those of the legislative power; and passed through three very distinct stages, as the popular, aristocratic, or regal influence predominated in the political system The Franks, Lombards, and Saxons seem alike to have been jealous of judicial authority, and averse to surrendering what concerned every man's private right, out of the hands of his neighbours and his equals. Every ten families are supposed to have had a magistrate of their own election: the tithing-man of England, the decanus of France and Lombardy.† Next in order was the centenarius or hundredary, whose name expresses the extent of his jurisdiction, and who, like the decanus, was chosen by those subject to it.‡ But the authority of these petty magistrates was gradually confined to the less important subjects of legal inquiry. No man, by a capitulary of Charlemagne, could be empleaded for his life, or liberty or lands, or servants, in the hundred court.§ In such weighty matters, or by

Original scheme of jurisdiction

* I am altogether indebted to Garnier for the proceedings of the States of Tours. His account, Hist. de France, t. xviii., p. 154–348, is extremely copious, and derived from a manuscript journal. Comines alludes to them sometimes, but with little particularity.

† The decanus is mentioned by a writer of the ninth age as the lowest species of judge, immediately under the centenarius. The latter is compared to the plebanus, or priest of a church, where baptism was performed, and the former to an inferior presbyter.—Du Cange, v. Decanus; and Muratori, Antiq. Ital., Dissert. x.

‡ It is evident from the Capitularies of Charlemagne, Baluze, t. i., p. 426 and 466, that the centenarii were elected by the people: that is, I suppose, the freeholders.

§ Ut nullus homo in placito centenarii neque ad mortem, neque ad libertatem suam amittendam, aut ad res reddendas vel mancipia judicetur. Sed ista aut in præsentiâ comitis vel missorum nostrorum judicentur.—Capit., A. D. 812. Baluz., p. 497

way of appeal from the lower jurisdictions, the count of the district was judge. He indeed was appointed by the sovereign; but his power was checked by assessors, called Scabini, who held their office by the election, or at least the concurrence, of the people.* These Scabini may be considered as a sort of jury, though bearing a closer analogy to the Judices Selecti, who sat with the pretor in the tribunals of Rome. An ultimate appeal seems to have lain to the count palatine, an officer of the royal household; and sometimes causes were decided by he sovereign himself.† Such was the original model of judicature; but as complaints of injustice and neglect were frequently made against the counts, Charlemagne, desirous on every account to control them, appointed special judges, called Missi Regii, who held assizes from place to place, inquired into abuses and maleadministration of justice, enforced its execution, and expelled inferior judges from their offices for misconduct.‡

This judicial system was gradually superseded by one founded upon totally opposite principles, those of feudal privilege. It is difficult to ascertain the progress of territorial jurisdiction. In many early charters of the French kings, beginning with one of Dagobert I., in 630, we find inserted in their grants of land an immunity from the entrance of the ordinary judges either to hear causes, or to exact certain dues accruing to the king and to themselves These charters indeed relate to church lands, which, as it seems implied by a law of Charlemagne, universally possessed an exemption from ordinary jurisdiction A precedent, however, in Marculfus, leads us to infer a similar immunity to have been usually in gifts to private persons.* These rights of justice in the beneficiary tenants of the crown are attested in several passages of the capitularies. And a charter of Louis I. to a private individual contains a full and exclusive concession of jurisdiction over all persons resident within the territory, though subject to the appellant control of the royal tribunals.† It is obvious, indeed, that an exemption from the regular judicial authorities implied or naturally led to a right of administering justice in their place. But this could at first hardly extend beyond the tributaries or villeins who cultivated their master's soil, or, at most, to free persons without property, resident in the territory. To determine their quarrels, or chastise their offences, was no very illustrious privilege. An allodial freeholder could own no jurisdiction but that of the king. It was the general prevalence of sub-infeudation which gave importance to the territorial jurisdictions of the nobility For now the military tenants, instead of repairing to the county-court, sought justice in that of their immediate lord; or rather the count himself, become the suzerain instead of the governor of his district, altered the form of his tribunal upon the feudal model.‡ A system of procedure so congenial to the spirit of the age spread universally over France and

Territorial jurisdiction.

* Baluzii Capitularia, p. 466. Muratori, Dissert. 10 Du Cange, v. Scabini. These Scabini may be traced by the light of charters down to the eleventh century.—Recueil des Historiens, t. vi., préface, p. 186. There is, in particular, a decisive proof of their existence in 918, in a record which I have already had occasion to quote.—Vaissette, Hist. de Languedoc, t. ii., Appendix, p. 56. Du Cange, Baluze, and other antiquaries, have confounded the Scabini with the Rachimburgii, of whom we read in the oldest laws. But M. Guizot has proved the latter were landowners, acting in the county courts as judges under the presidency of the count, but wholly independent of him. The Scabini in Charlemagne's age superseded them.—Essai sur l'Histoire de France, p. 259, 272.

† Du Cange, Dissertation 14, sur Joinville; and Glossary, v. Comites Palatini; Mém. de l'Acad. des Inscript., t. xxx., p. 590. Louis the Debonair gave one day in every week for hearing causes; but his subjects were required not to have recourse to him, unless where the Missi or the counts had not done justice.—Baluze, t. i., p. 668. Charles the Bald expressly reserves an appeal to himself from the inferior tribunals.—Capit. 869, t. ii., p. 215. In his reign, there was at least a claim to sovereignty preserved.

‡ For the jurisdiction of the Missi Regii, besides the Capitularies themselves, see Muratori's eighth Dissertation. They went their circuits four times a year.—Capitul., A. D. 812. A. D. 823. A vestige of this institution long continued in the province of Auvergne, under the name of Grands Jours d'Auvergne; which Louis XI. revived in 1479.—Garnier, Hist. de France, t. xviii., p. 458.

* Marculfi Formulæ, l. i., c. 17.

† Et nullus comes, nec vicarius, nec juniores eorum, nec ullus judex publicus illorum homines, qui super illorum aprisione habitant, aut in illorum proprio, distringere nec judicare præsumant; sed Johannes et filii sui, et posteritas illorum, illi eos judicent et distringant. Et quicquid per legem judicaverint, stabilis permaneat. Et si extra legem fecerint, per legem emendent.—Baluzii Capitularia, t. ii., p. 1405.

This appellant control was preserved by the capitulary of Charles the Bald, quoted already, over the territorial, as well as royal tribunals. Si aliquis episcopus, vel comes ac vassus noster suo homini contra rectum et justitiam fecerit, et si inde ad nos reclamaverit, sciat quia, sicut ratio et lex est, hoc emendare faciemus.

‡ We may perhaps infer, from a capitulary of Charlemagne in 809, that the feudal tenants were already employed as assessors in the administration of justice, concurrently with the Scabini mentioned above. Ut nullus ad placitum venire cogatur, nisi qui causam habet ad quærendum, exceptis scabinis et vassallis comitum.—Baluz., Capitularia t. i., p. 465.

Germany The tribunals of the king were forg otten like his laws; the one re-aining as little authority to correct, as the other to regulate, the decisions of a territorial judge. The rules of evidence were superseded by that monstrous birth of ferocity and superstition, the judicial combat, and the maxims of law reduced to a few capricious customs, which varied in almost every barony.

These rights of administering justice were possessed by the owners of fiefs in very different degrees; and, in France, were divided into the high, the middle, and the low jurisdiction.* The first species alone (la haute justice) conveyed the power of life and death; it was inherent in the baron and the châtelain, and sometimes enjoyed by the simple vavassor. The lower jurisdictions were not competent to judge in capital cases, and consequently forced to send such criminals to the court of the superior. But in some places, a thief taken in the fact might be punished with death by a lord who had only the low jurisdiction. In England, this privilege was known by the uncouth terms of Infangthef and Outfangthef. The high jurisdiction, however, was not very common in this country, except in the chartered towns.†

Its divisions.

Several customs rendered these rights of jurisdiction far less instrumental to tyranny than we might infer from their extent. While the counts were yet officers of the crown, they frequently appointed a deputy, or viscount, to administer justice. Ecclesiastical lords, who were prohibited by the canons from inflicting capital punishment, and supposed to be unacquainted with the law followed in civil courts, or unable to enforce it, had an officer by name of advocate or vidame, whose tenure was often feudal and hereditary. The viguiers (vicarii), bailiffs, provosts, and seneschals of lay lords were similar ministers, though not in general of so permanent a right in their offices, or of such eminent station, as the advocates of monasteries. It seems to have been an established maxim, at least in later times, that the lord could not sit personally in judgment, but must intrust that function to his bailiff and vassals.* According to the feudal rules, the lord's vassals or peers of his court were to assist at all its proceedings. "There are some places," says Beaumanoir, "where the plaintiff decides in judgment, and others, where the vassals of the lord decide. But even where the bailiff is the judge, he ought to advise with the most prudent, and determine by their advice, since thus he shall be most secure if an appeal is made from his judgment."† And indeed the presence of these assessors was so essential to all territorial jurisdiction, that no lord, to whatever rights of justice his fief might entitle him, was qualified to exercise them, unless he had at least two vassals to sit as peers in his court.‡

Its administration.

These courts of a feudal barony or manor required neither the knowledge of positive law, nor the dictates of natural sagacity. In all doubtful cases, and especially where a crime not capable of notorious proof was charged, the Trial by combat was awarded; and God, as they deemed, was the judge.§ The no-

Trial by combat.

* Velly t. vi., p. 131. Denisart, Houard, and other law-books.

† A strangely cruel privilege was possessed in Aragon by the lords who had not the higher jurisdiction, and consequently could not publicly execute a criminal; that of starving him to death in prison. This was established by law in 1247. Si vassallus domini non habentis merum nec mixtum imperium, in loco occiderit vassallum, dominus loci potest eum occidere fame, frigore et siti. Et quilibet dominus loci habet hanc jurisdictionem necandi fame, frigore et siti in suo loco, licet nullam aliam jurisdictionem criminalem habeat.—Du Cange, voc. Fame necare.

It is remarkable, that the Neapolitan barons had no criminal jurisdiction, at least of the higher kind, till the reign of Alfonso, in 1443, who sold this destructive privilege, at a time when it was almost abolished in other kingdoms.—Giannone, l. xxii., c. 5, and l. xxvi. c 6

* Boutillier, in his Somme Rurale, written near the end of the fourteenth century, asserts this positively. Il convient quilz facent jugier par aultre que par eulx, cest a savoir par leurs hommes feudaulx a leur semonce et *conjuré* [?] ou de leur bailift ou lieutenant, et ont ressort a leur souverain, fol. 3.

† Coûtumes de Beauvoisis, p. 11.

‡ It was lawful, in such case, to borrow the vassals of the superior lord.—Thaumassiere sur Beaumanoir, p. 375. See Du Cange, v. Pares; an excellent article, and Placitum.

In England a manor is extinguished, at least as to jurisdiction, when there are not two freeholders subject to escheat left as suiters to the court-baron. Their tenancy must therefore have been created before the statute of Quia emptores, 18 Edw. I. (1290), since which no new estate in fee simple can be held of the lord, nor, consequently, be liable to escheat to him.

§ Trial by combat does not seem to have established itself completely in France till ordeals went into disuse, which Charlemagne rather encouraged, and which, in his age, the clergy for the most part approved. The former species of decision may, however, be met with under the first Merovingian kings (Greg. Turon., l. vii., c. 19; l. x., c. 10), and seems to have prevailed in Burgundy. It is established by the laws of the Alemanni or Swabians.—Baluz., t. i., p. 80. It was always popular in Lombardy. Luitprand, king of the Lombards, says in one of his laws: Incerti sumus de judicio Dei, et quosdam audivimus per pugnam sine justâ causâ suam causam perdere. Sed propter consuetudinem gentis nostræ Langobardorum legem impiam retare

bleman fought on horseback, with all his arms of attack and defence; the plebeian on foot, with his club and target. The same were the weapons of the champions, to whom women and ecclesiastics were permitted to intrust their rights.* If the combat was intended to ascertain a civil right, the vanquished party of course forfeited his claim, and paid a fine. If he fought by proxy, the champion was liable to have his hand struck off; a regulation necessary perhaps to obviate the corruption of these hired defenders. In criminal cases, the appellant suffered, in the event of defeat, the same punishment which the law awarded to the offence of which he accused his adversary.† Even where the cause was more peaceably tried, and brought to a regular adjudication by the court, an appeal for false judgment might indeed be made to the suzerain, but it could only be tried by battle.‡ And in this, the appellant, if he would impeach the concurrent judgment of the court below, was compelled to meet successively in combat every one of its members; unless he should vanquish them all within the day, his life, if he escaped from so many hazards, was forfeited to the law. If fortune or miracle should make him conqueror in every contest, the judges were equally subject to death, and their court forfeited their jurisdiction for ever. A less perilous mode of appeal was to call the first judge who pronounced a hostile sentence into the field. If the appellant came off victorious in this challenge, the decision was reversed, but the court was not impeached.§ But for denial of justice, that is, for a refusal to try his suit, the plaintiff repaired to the court of the next superior lord, and supported his appeal by testimony.‖ Yet, even here, the witnesses might be defied, and the pure stream of justice turned at once into the torrent of barbarous contest.*

Such was the judicial system of France, when St. Louis enacted that great code which bears the name of his Establishments. The rules of civil and criminal procedure, as well as the principles of legal decisions, are there laid down with much detail. But that incomparable prince, unable to overthrow the judicial combat, confined himself to discouraging it by the example of a wiser jurisprudence. It was abolished throughout the royal domains. The bailiffs and seneschals who rendered justice to the king's immediate subjects, were bound to follow his own laws. He not only received appeals from their sentences in his own court of peers, but listened to all complaints with a kind of patriarchal simplicity. "Many times," says Joinville, "I have seen the good saint, after hearing mass in the summer season, lay himself at the foot of an oak in the wood of Vincennes, and make us all sit round him; when those who would came and spake to him, without let of any officer,

Establishments of St. Louis.

non possumus.—Muratori, Script. Rerum Italicarum, t. ii., p. 65. Otho II. established it in all disputes concerning real property; and there is a famous case, where the right of representation, or preference of the son of a deceased elder child to his uncle in succession to his grandfather's estate, was settled by this test.

* For the ceremonies of trial by combat, see Houard, Anciennes Loix Françoises, t. i., p. 264. Velly, t. vi., p. 106. Recueil des Historiens, t. xi., préface, p. 189. Du Cange, v. Duellum. The great original authorities are the Assises de Jérusalem, c. 104, and Beaumanoir, c. 31.

† Beaumanoir, p. 315.

‡ Idem, c 61. In England the appeal for false judgment to the king's court was not tried by battle.—Glanvil, l. xii., c. 7.

§ Idem, c. 61.

‖ Id., p. 315. The practice was to challenge the *second* witness, since the testimony of one was insufficient. But this must be done before he commences his oath, says Beaumanoir, for after he has once sworn, he must be heard and believed, p. 316. No one was bound, as we may well believe, to be a witness for another, in cases where such an appeal might be made from his testimony.

* Mably is certainly mistaken in his opinion, that appeals for denial of justice were not older than the reign of Philip Augustus.—(Observations sur l'Hist. de F., l. iii., c. 3.) Before this time the vassal's remedy, he thinks, was to make war upon his lord. And this may probably have been frequently practised. Indeed it is permitted, as we have seen, by the code of St. Louis. But those who were not strong enough to adopt this dangerous means of redress, would surely avail themselves of the assistance of the suzerain, which in general would be readily afforded. We find several instances of the king's interference for the redress of injuries, in Suger's life of Louis VI. That active and spirited prince, with the assistance of his illustrious biographer, recovered a great part of the royal authority, which had been reduced to the lowest ebb in the long and slothful reign of his father, Philip I. One passage, especially, contains a clear evidence of the appeal for denial of justice, and consequently refutes Mably's opinion. In 1105, the inhabitants of St. Sévère, in Berri, complain of their lord Humbald, and request the king aut ad exequendam justitiam cogere, aut jure pro injuriâ castrum lege Salicâ amittere. I quote from the preface to the fourteenth volume of the Recueil des Historiens, p. 44. It may be noticed by the way, that lex Salica is here used for the feudal customs; in which sense I believe it not unfrequently occurs. Many proofs might be brought of the interposition of both Louis VI. and VII. in the disputes between their barons and arrière vassals. Thus the war between the latter and Henry II. of England, in 1166, was occasioned by his entertaining a complaint from the Count of Auvergne, without waiting for the decision of Henry, as Duke of Guienne.—Velly, t iii., p 190. Lyttleton's Henry II., vo . ii. p. 448 Recueil des Historiens, ubi supra, p 49

and he would ask aloud if there were any present who had suits; and when they appeared, would bid two of his bailiffs determine their cause upon the spot."*

The influence of this new jurisprudence established by St. Louis, combined with the great enhancements of the royal prerogatives in every other respect, produced a rapid change in the legal administration of France. Though trial by combat occupies a considerable space in the work of Beaumanoir, written under Philip the Bold, it was already much limited. Appeals for false judgment might sometimes be tried, as he expresses it, par erremens de plait, that is, I presume, where the alleged error of the court below was in matter of law. For wager of battle was chiefly intended to ascertain controverted facts.† So where the suzerain saw clearly that the judgment of the inferior court was right, he ought not to permit the combat. Or if the plaintiff, even in the first instance, could produce a record or a written obligation; or if the fact before the court was notorious, there was no room for battle.‡ It would be a hard thing, says Beaumanoir, that if one had killed my near relation in open day, before many credible persons, I should be compelled to fight in order to prove his death. This reflection is the dictate of common sense, and shows that the prejudice in favour of judicial combat was dying away. In the Assises de Jérusalem, a monument of customs two hundred years earlier than the age of Beaumanoir, we find little mention of any other mode of decision. The compiler of that book thinks it would be very injurious, if no wager of battle were to be allowed against witnesses in causes affecting succession; since otherwise every right heir might be disinherited, as it would be easy to find two persons who would perjure themselves for money, if they had no fear of being challenged for their testimony.◊ This passage indicates the real cause of preserving the judicial combat; systematic perjury in witnesses, and want of legal discrimination in judges.

It was, in all civil suits, at the discretion of the litigant parties, to adopt the law of the Establishments instead of resorting to combat.‖ As gentler manners prevailed, especially among those who did not make arms their profession, the wisdom and equity of the new code were naturally preferred. The superstition which had originally led to the latter lost its weight through experience and the uniform opposition of the clergy. The same superiority of just and settled rules over fortune and violence, which had forwarded the encroachments of the ecclesiastical courts, was now manifested in those of the king. Philip Augustus, by a famous ordinance in 1190, first established royal courts of justice, held by the officers called bailiffs or seneschals, who acted as the king's lieutenants in his domains.* Every barony, as it became reunited to the crown, was subjected to the jurisdiction of one of these officers, and took the name of a bailliage or a seneschaussée; the former name prevailing most in the northern, the latter in the southern provinces. The vassals whose lands depended upon, or, in feudal language, moved from the superiority of this fief, were obliged to submit to the ressort or supreme appellant jurisdiction of the royal court established in it.† This began rapidly to encroach upon the feudal rights of justice. In a variety of cases, termed royal, the territorial court was pronounced incompetent; they were reserved for the judges of the crown; and, in every case, unless the defendant excepted to the jurisdiction, the royal court might take cognizance of a suit, and decide it in exclusion of the feudal judicature.‡ The nature of cases reserved under the name of royal was kept in studied ambiguity, under cover of which the judges of the crown perpetually strove to multiply them. Louis X., when requested by the barons of Champagne to explain what was meant by royal causes gave this mysterious definition: Every thing which by right or custom ought exclusively to come under the cognizance of a sovereign prince.◊ Vassals were permitted to complain in the first instance to the king's court, of injuries committed by their lords. These rapid and violent encroachments left the nobility no alternative but armed combinations to support their remonstrances. Philip the Fair bequeathed to his successor the task of appeasing a storm which his own administration had excited. Leagues were formed in most of the northern provinces for the redress of grievances, in which the third estate, oppressed by taxation, uni-

Royal tribunals and progress of their jurisdiction.

* Collection des Mémoires, t. i., p. 25.
† Beaumanoir, p. 32. ‡ Id., p. 314.
◊ C. 167. ‖ Beaumanoir, p. 309.

* Ordonnances des Rois, t. i., p. 18.
† Du Cange, v. Ballivi. Mém. de l'Acad. des Inscriptions, t. xxx., p. 603. Mably, l. iv., c. 4. Boulainvilliers, t. ii., p. 22.
‡ Mably, Boulainvilliers. Montlosier, t. i., p. 61
◊ Ordonnances des Rois, p. 606

ted with the vassals, whose feudal privileges had been infringed. Separate charters were granted to each of these confederacies by Louis Hutin, which contain many remedial provisions against the grosser violations of ancient rights, though the crown persisted in restraining territorial jurisdictions.* Appeals became more common for false judgment, as well as denial of right; and in neither was the combat permitted. It was still, however, preserved in accusations of heinous crimes, unsupported by any testimony but that of the prosecutor, and was never abolished by any positive law, either in France or England. But instances of its occurrence are not frequent even in the fourteenth century; and one of these, rather remarkable in its circumstances, must have had a tendency to explode the remaining superstition which had preserved this mode of decision.†

Royal council, or court of peers.

The supreme council, or court of peers, to whose deliberative functions I have already adverted, was also the great judicial tribunal of the French crown from the accession of Hugh Capet. By this alone the barons of France, or tenants in chief of the king, could be judged. To this court appeals for denials of justice were referred. It was originally composed, as has been observed, of the feudal vassals, coequals of those who were to be tried by it; and also of the household officers, whose right of concurrence, however anomalous, was extremely ancient.‡ But after the business of the court came to increase through the multiplicity of appeals, especially from the bailiffs established by Philip Augustus in the royal domains, the barons found neither leisure nor capacity for the ordinary administration of justice, and reserved their attendance for occasions where some of their own orders were implicated in a criminal process. St Louis, anxious for regularity and enlightened decisions, made a considerable alteration by introducing some counsellors of inferior rank, chiefly ecclesiastics, as advisers of the court, though, as is supposed, without any decisive suffrage. The court now became known by the name of parliament. Registers of its proceedings were kept, of which the earliest extant are of the year 1254. It was still perhaps in some degree ambulatory; but by far the greater part of its sessions in the thirteenth century were at Paris. The counsellors nominated by the king, some of them clerks, others of noble rank, but not peers of the ancient baronage, acquired insensibly a right of suffrage.*

Cours Plénières.

Parliament of Paris.

An ordinance of Philip the Fair in 1302 is generally supposed to have fixed the seat of parliament at Paris, as well as altered its constituent parts.† Perhaps a series of progressive changes has been referred to a single epoch. But whether by virtue of this ordinance, or of more gradual events, the character of the whole feudal court was nearly obliterated in that of the parliament of Paris. A systematic tribunal took the place of a loose aristocratic assembly. It was to hold two sittings in the year, each of two months' duration; it was composed of two prelates, two counts, thirteen clerks, and as many laymen. Great changes were made afterward in this constitution. The nobility, who originally sat there, grew weary of an attendance which detained them from war and from their favourite pursuits at home. The bishops were dismissed to their necessary residence upon their sees.‡ As they withdrew, that class of regular lawyers, original

Obligations of a vassal.

* Hoc perpetuo prohibemus edicto, ne subditi, seu justiciabiles prælatorum aut baronum nostrorum aut aliorum subjectorum nostrorum, trahantur in causam coram nostris officialibus, nec eorum causæ, nisi in casu ressorti, in nostris curiis audiantur, vel in alio casu ad nos pertinenti.—Ordonnances des Rois, t. i., p. 362. This ordinance is of Philip the Fair, in 1302; but those passed under Louis Hutin are to the same effect. They may be read at length in the Ordonnances des Rois, or abridged by Boulainvilliers, t. ii., p. 94.

† Philip IV. restricted trial by combat to cases where four conditions were united. The crime must be capital: Its commission certain: The accused greatly suspected: And no proof to be obtained by witnesses. Under these limitations, or at least some of them, for it appears that they were not all regarded, instances occur for some centuries.

See the singular story of Carouges and Le Gris, to which I allude in the text.—Villaret, t. xi., p. 412. Trial by combat was allowed in Scotland exactly under the same conditions as in France.—Pinkerton's Hist. of Scotl., vol. i., p. 66.

‡ This court had always, it must be owned, a pretty considerable authority over some of the royal vassals. Even in Robert's reign, the Count of Anjou and another nobleman of less importance were summoned before it.—Recueil des Historiens, t. x., p. 473. 476

* Boulainvilliers, t. ii., p. 29, 44. Mably, l. iv., c. 2. Encyclopédie, Art. Parlement. Mém. de l'Acad. des Inscript., t. xxx., p. 603. The great difficulty I have found in this investigation will plead my excuse if errors are detected.

† Pasquier (Recherches de la France, l. ii., c. 3), published this ordinance, which, indeed, as the editor of Ordonnances des Rois, t. i., p. 547, observes, is no ordinance, but a regulation for the execution of one previously made; nor does it establish the residence of the Parliament of Paris.

‡ Velly, Hist. de France, t. vii., p. 303, and Encyclopédie, Art. Parlement, are the best authorities I have found. There may very possibly be supe-

ly employed, as it appears, in the preparatory business without any decisive voice, came forward to the higher places, and established a complicated and tedious system of procedure, which was always characteristic of French jurisprudence. They introduced at the same time a new theory of absolute power and unlimited obedience. All feudal privileges were treated as encroachments on the imprescriptible rights of monarchy. With the natural bias of lawyers in favour of prerogative conspired that of the clergy, who fled to the king for refuge against the tyranny of the barons. In the civil and canon laws a system of political maxims was found, very uncongenial to the feudal customs. The French lawyers of the fourteenth and fifteenth centuries frequently gave their king the title of emperor, and treated disobedience to him as sacrilege.*

Decline of the feudal system.

But among these lawyers, although the general tenants of the crown by barony ceased to appear, there still continued to sit a more eminent body, the lay and spiritual peers of France, representatives, as it were, of that ancient baronial aristocracy. It is a very controverted question at what time this exclusive dignity of peerage a word obviously applicable by the feudal law to all persons coequal in degree of tenure, was reserved to twelve vassals. At the coronation of Philip Augustus, in 1179, we first perceive the six great feudatories, dukes of Burgundy, Normandy, Guienne, counts of Toulouse, Flanders, Champagne, distinguished by the offices they performed in that ceremony. It was natural indeed that, by their princely splendour and importance, they should eclipse such petty lords as Bourbon and Coucy, however equal in quality of tenure. During the reign of Philip Augustus, six ecclesiastical peers, the duke-bishops of Rheims, Laon, and Langres, the count-bishops of Beauvais, Châlons, and Noyon, were added, as a sort of parallel or counterpoise.† Their precedence does not, however, appear to have carried with it any other privilege, at least in judicature, than other barons enjoyed. But their pre-eminence being fully confirmed, Philip the Fair set the precedent of augmenting their original number,‡ by conferring the dignity of peerage on the Duke of Britany and the Count of Artois. Other creations took place subsequently; but they were confined, during the period comprised in this work, to princes of the royal blood. The peers were constant members of the parliament, from which other vassals holding in chief were never perhaps excluded by law, but their attendance was rare in the fourteenth century, and soon afterward ceased altogether.*

Peers of France.

A judicial body composed of the greatest nobles in France, as well as of learned and eminent lawyers, must naturally have soon become politically important. Notwithstanding their disposition to enhance every royal prerogative, as opposed to feudal privileges, the parliament was not disinclined to see its own protection invoked by the subject. It appears by an ordinance of Charles V., in 1371, that the nobility of Languedoc had appealed to the parliament of Paris against a tax imposed by the king's authority; and this, at a time when the French constitution did not recognise the levying of money without consent of the States General, must have been a just ground of appeal, though the present ordinance annuls and overturns it.† During the tempests of Charles VI.'s unhappy reign, the parliament acquired a more decided authority, and held, in some degree, the balance between the contending factions of Orleans and Burgundy. This influence was partly owing to one remarkable function attributed to the parliament, which raised it much above the level of a merely political tribunal, and has at various times wrought striking effects in the French monarchy.

Progress of the jurisdiction of the parliament.

The few ordinances enacted by kings of France in the twelfth and thirteenth centuries were generally by the advice of their royal council, in which probably they were solemnly declared as well as agreed upon. But after the gradual revolution of government, which took away from the feudal aristocracy all control over the king's edicts, and substituted a new magistracy for the ancient baronial court, these legislative ordinances were commonly drawn up by the interior council, or what we may call the ministry. They were in some instances promulgated by the king in parliament. Others were sent thither for registration, or entry upon their records. This formality was by degrees, if not from the

Royal edicts enregistered in parliament.

For works on this branch of the French constitution, which have not fallen into my hands.

* Mably, l. iv., c. 2, note 10.

† Velly, t. ii., p. 287; t. iii., p. 221; t. iv., p. 41.

‡ Ibid., t. vii., p. 97.

* Encyclopédie, Art Parlement, p. 6

† Mably, .. v., c. 5, note 5

beginning, deemed essential to render them authentic and notorious, and therefore indirectly gave them the sanction and validity of a law.* Such, at least, appears to have been the received doctrine before the end of the fourteenth century. It has been contended by Mably among other writers, that at so early an epoch, the parliament of Paris did not enjoy, nor even claim to itself, that anomalous right of judging the expediency of edicts proceeding from the king, which afterward so remarkably modified the absoluteness of his power. In the fifteenth century, however, it certainly manifested pretensions of this nature: first, by registering ordinances in such a manner as to testify its own unwillingness and disapprobation, of which one instance occurs as early as 1418, and another in 1443; and, afterward, by remonstrating against, and delaying the registration of laws, which it deemed inimical to the public interest. A conspicuous proof of this spirit was given in their opposition to Louis XI. when repealing the Pragmatic Sanction of his father; an ordinance essential, in their opinion, to the liberties of the Gallican church. In this instance they ultimately yielded; but at another time they persisted in a refusal to enregister letters containing an alienation of the royal domain.†

Counsellors of parliament appointed for life and by election.

The counsellors of parliament were originally appointed by the king; and they were even changed according to circumstances. Charles V. made the first alteration, by permitting them to fill up vacancies by election: which usage continued during the next reign. Charles VII. resumed the nomination of fresh members upon vacancies. Louis XI. even displaced actual counsellors. But in 1468, from whatever motive, he published a most important ordinance, declaring the presidents and counsellors of parliament immoveable, except in case of legal forfeiture.‡ This extraordinary measure of conferring independence on a body, which had already displayed a consciousness of its eminent privilege by opposing the registration of his edicts, is perhaps to be deemed a proof of that short-sightedness as to points of substantial interest so usually found in crafty men. But, be this as it may, there was formed in the parliament of Paris an independent power not emanating from the royal will, nor liable, except through force, to be destroyed by it; which, in later times, became almost the sole depositary, if not of what we should call the love of freedom, yet of public spirit and attachment to justice. France, so fertile of great men in the sixteenth and seventeenth centuries, might better spare, perhaps, from her annals any class and description of them than her lawyers. Doubtless the parliament of Paris, with its prejudices and narrow views, its high notions of loyal obedience, so strangely mixed up with remonstrances and resistance, its anomalous privilege of objecting to edicts, hardly approved by the nation who did not participate in it, and overturned with facility by the king, whenever he thought fit to exert the sinews of his prerogative, was but an inadequate substitute for that co-ordinate sovereignty, that equal concurrence of natural representatives in legislation, which has long been the exclusive pride of our government, and to which the States General of France, in their best days, had never aspired. No man of sane understanding would desire to revive institutions both uncongenial to modern opinions and to the natural order of society. Yet the name of the parliament of Paris must ever be respectable. It exhibited, upon various occasions, virtues from which human esteem is as inseparable as the shadow from the substance; a severe adherence to principles, an unaccommodating sincerity, individual disinterestedness and consistency. Whether indeed these qualities have been so generally characteristic of the French people as to afford no peculiar commendation to the parliament of Paris, it is rather for the observer of the present day than the historians of past times to decide.*

* Encyclopédie, Art. Parlement.

† Mably, l. vi., c. 5, note 19 and 21. Garnier, Hist. de France, t. xvii., p. 219, 380.

‡ Villaret, t. xiv., p. 231. Encyclopédie, Art. Parlement.

* The province of Languedoc, with its dependances of Quercy and Rouergue, having belonged almost in full sovereignty to the counts of Toulouse, was not perhaps subject to the feudal resort, or appellant jurisdiction of any tribunal at Paris. Philip the Bold, after its reunion to the crown, established the parliament of Toulouse, a tribunal without appeal, in 1280. This was however suspended from 1291 to 1443, during which interval the parliament of Paris exercised an appellant jurisdiction over Languedoc.—Vaissette, Hist. de Lang., t. iv., p. 60, 71, 524. Sovereign courts or parliaments were established by Charles VII. at Grenoble for Dauphiné, and by Louis XI. at Bordeaux and Dijon for Guienne and Burgundy. The parliament of Rouen is not so ancient. These institutions rather diminished the resort of the parliament of Paris, which had extended over Burgundy, and, in time of peace, over Guienne.

A work has appeared within a very few years, which throws an abundant light on the judicial system, and indeed on the whole civil policy of

Causes of the decline of the feudal system.

The principal causes that operated in subverting the feudal system may be comprehended under three distinct heads; the increasing power of the crown, the elevation of the lower ranks, and the decay of the feudal principle.

Acquisitions of power by the crown.

It has been my object in the last pages to point out the acquisitions of power by the crown of France in respect of legislative and judicial authority. The principal augmentations of its domain have been historically mentioned in the last chapter; but the subject may here require further notice.

Augmentation of the domain.

The French kings naturally acted upon a system, in order to recover those possessions which the improvidence or necessities of the Carlovingian race had suffered almost to fall away from the monarchy. This course, pursued with tolerable steadiness for two or three centuries, restored their effective power. By escheat or forfeiture, by bequest or succession, a number of fiefs were merged in their increasing domain.* It was part of their policy to obtain possession of arriere-fiefs, and thus to become tenants of their own barons. In such cases the king was obliged, by the feudal duties, to perform homage, by proxy, to his subjects, and engage himself to the service of his fief. But, for every political purpose, it is evident that the lord could have no command over so formidable a vassal.*

The reunion of so many fiefs was attempted to be secured by a legal principle, that the domain was inalienable and imprescriptible. This became at length a fundamental maxim in the law of France. But it does not seem to be much older than the reign of Philip V., who, in 1318, revoked the alienations of his predecessors, nor was it thoroughly established, even in theory, till the fifteenth century.† Alienations, however, were certainly very repugnant to the policy of Philip Augustus and St. Louis. But there was one species of infeudation, so consonant to ancient usage and prejudice, that it could not be avoided upon any suggestions of policy; this was the investiture of younger princes of the blood with considerable territorial appanages. It is remarkable that the epoch of appanages on so great a scale was the reign of St. Louis, whose efforts were constantly directed against feudal independence. Yet he invested his brothers with the counties of Poitou, Anjou, and Artois, and his sons with those of Clermont and Alençon

France, as well as other countries, during the middle ages. I allude to L'Esprit, Origine et Progrès des Institutions judiciaires des principaux Pays de l'Europe, by M. Meyer, of Amsterdam; especially the first and third volumes. It would have been fortunate had its publication preceded that of the first edition of the present work; as I might have rendered this chapter on the feudal system in many respects more perspicuous and correct. As it is, without availing myself of M. Meyer's learning and acuteness to illustrate the obscurity of these researches, or discussing the few questions upon which I might venture, with deference, to adhere to another opinion, neither of which could conveniently be done on the present occasion, I shall content myself with this general reference to a performance of singular diligence and ability, which no student of these antiquities should neglect. In all essential points I am happy not to perceive that M. Meyer's views of the middle ages are far different from my own.—*Note to the fourth edit.*

* The word domain is calculated, by a seeming ambiguity, to perplex the reader of French history. In its primary sense, the domain or demesne (dominicum) of any proprietor was confined to the lands in his immediate occupation; excluding those of which his tenants, whether in fief or villanage, whether for a certain estate or at will, had an actual possession, or, in our law-language, pernancy of the profits. Thus the compilers of Domesday-Book distinguish, in every manor, the lands held by the lord in demesne from those occupied by his villeins or other tenants. And in England, the word, if not technically, yet in use is still confined to this sense. But in a secondary acceptation, more usual in France, the domain comprehended all lands for which rent was paid (censives), and which contributed to the regular annual revenue of the proprietor. The great distinction was between lands in demesne and those in fief. A grant of territory, whether by the king or another lord, comprising as well domanial estates and tributary towns as feudal superiorities, was expressed to convey "in dominico quod est in dominico, et in feodo quod est in feodo." Since, therefore, fiefs, even those of the vavassors or inferior tenantry, were not part of the lord's domain, there is, as I said, an apparent ambiguity in the language of historians who speak of the reunion of provinces to the royal domain. This ambiguity, however, is rather apparent than real. When the dutchy of Normandy, for example, is said to have been united by Philip Augustus to his domain, we are not, of course, to suppose that the soil of that province became the private estate of the crown. It continued, as before, in the possession of the Norman barons and their sub-vassals, who had held their estates of the dukes. But it is meant only that the King of France stood exactly in the place of the Duke of Normandy, with the same rights of possession over lands absolutely in demesne, of rents and customary payments from the burgesses of towns and tenants in roture or villanage, and of feudal services from the military vassals. The immediate superiority, and the immediate resort of jurisdiction over these, devolved to the crown, and thus the dutchy of Normandy, considered as a fief, was reunited, or, more properly, merged in the royal domain, though a very small part of the territory might become truly domanial.

* See a memorial on the acquisition of arriere-fiefs by the kings of France, in Mém. de l'Acad. des Inscript., t. 1, by M. Dacier.

† Préface au 15me tome des Ordonnances, par M. de Pastoret.

This practice, in later times, produced very mischievous consequences.

Under a second class of events that contributed to destroy the spirit of the feudal system, we may reckon the abolition of villanage; the increase of commerce, and consequent opulence of merchants and artisans; and especially the institutions of free cities and boroughs. This is one of the most important and interesting steps in the progress of society during the middle ages, and deserves particular consideration.

The provincial cities under the Roman empire enjoyed, as is well known, a municipal magistracy and the right of internal regulation. It would not have been repugnant, perhaps, to the spirit of the Frank and Gothic conquerors, to have left them in possession of these privileges. But there seems no satisfactory proof that they were preserved either in France or in Italy;* or, if they existed at all, they were swept away, in the former country, during the confusion of the ninth century, which ended in the establishment of the feudal system. Every town, except within the royal domains, was subject to some lord. In episcopal cities the bishop possessed a considerable authority; and in many there was a class of resident nobility. It is probable that the proportion of freemen was always greater than in the country; some sort of retail trade, and even of manufacture, must have existed in the rudest of the middle ages, and consequently some little capital was required for their exercise. Nor was it so easy to oppress a collected body, as the scattered and dispirited cultivators of the soil. Probably therefore the condition of the towns was at all times by far the more tolerable servitude; and they might enjoy several immunities by usage, before the date of those charters which gave them sanction. In Provence, where the feudal star shone with a less powerful ray, the cities, though not independently governed, were more flourishing than the French.† Marseilles, in the beginning of the twelfth age, was able to equip powerful navies, and to share in the wars of Genoa and Pisa against the Saracens of Sardinia.

Free and chartered towns.

The earliest charters of community granted to towns in France have been commonly referred to the time of Louis the Sixth; though it is not improbable that some cities in the south had a municipal government by custom, if not by grant, at an earlier period.* Noyon, St. Quentin, Laon, and Amiens appeared to have been the first that received emancipation at the hands of this prince.† The

Earliest charters

* M. de Bréquigny says that Lyons and Rheims can trace their own municipal government some centuries higher than the establishment of communes by Louis VI. The former city, which indeed was not French at that time, never had a charter of incorporation.—Ordonnances des Rois, t. xi., préface, p. 4. This preface contains an excellent account of the origin and privileges of chartered towns in France.

† There were more freemen in Provence, says an historian of the country, than in any other part of France; and the revolutions of the monarchy being less felt than elsewhere, our towns naturally preserved their municipal government. I have borrowed this quotation from Heeren, Essai sur l'Influence des Croisades, p. 122, to whom I am indebted for other assistance. Vaissette also thinks that the inhabitants of towns in Languedoc were personally free in the tenth century; though those of the country were in servitude.—Hist. de Languedoc, t. ii., p. 111.

* Ordonnances des Rois, ubi supra, p. 7. These charters are as old as 1110, but the precise date is unknown.

† The Benedictine historians of Languedoc are of opinion that the city of Nismes had municipal magistrates even in the middle of the tenth century, t. ii., p. 111. However this may be, the *citizens* of Narbonne are expressly mentioned in 1080.—Appendix, p. 208. The *burgesses* of Carcassone appear by name in a charter of 1107, p. 515. In one of 1131, the *consuls* of Beziers are mentioned; they existed therefore previously, p. 409, and Appendix, p. 959. The magistrates of St. Antonin en Rouergue are named in 1136; those of Montpelier in 1142; of Narbonne in 1148; and of St. Gilles in 1149, pp. 515, 432, 442, 464. The capitouls of Toulouse pretend to an extravagant antiquity; but were in fact established by Alfonso, count of Toulouse, who died in 1148. In 1152, Raymond V. confirmed the regulations made by the common council of Toulouse, which became the foundation of the customs of that city, p. 472.

If we may trust altogether to the Assises de Jérusalem in their present shape, the court of burgesses having jurisdiction over persons of that rank was instituted by Godfrey of Bouillon, who died 1100.—Ass. de Jérus., c. 2. This would be even earlier than the charter of London, granted by Henry I. Lord Lyttleton goes so far as to call it "certain, that in England many cities and towns were bodies corporate and communities long before the alteration introduced into France by the charters of Louis le Gros."—Hist. of Henry II., vol. iv., p. 29. But this position, as I shall more particularly show in another place, is not borne out by any good authority, if it extends to any internal jurisdiction, and management of their own police; whereof, except in the instance of London, we have no proof before the reign of Henry II.

But the incorporation of communities seems to have been decidedly earlier in Spain than in any other country. Alfonso V., in 1020, granted a charter to Leon, which is said to mention the common council of that city in terms that show it to be an established institution. During the latter part of the eleventh century, as well as in subsequent times, such charters are very frequent.—Marina Ensayo Historico-Critico sobre las siete partidas. In several instances we find concessions of smaller privileges to towns without any political power. Thus Berenger, count of Barcelona, in 1095 con-

chief towns in the royal domains were successively admitted to the same privileges during the reigns of Louis VI., Louis VII., and Philip Augustus. This example was gradually followed by the peers and other barons; so that by the end of the thirteenth century, the custom had prevailed over all France. It has been sometimes imagined, that the crusades had a material influence in promoting the erection of communities. Those expeditions would have repaid Europe for the prodigality of crimes and miseries which attended them, if this notion were founded in reality. But I confess that in this, as in most other respects, their beneficial consequences appear to me very much exaggerated. The cities of Italy obtained their internal liberties by gradual encroachments, and by the concessions of the Franconian emperors. Those upon the Rhine owed many of their privileges to the same monarchs, whose cause they had espoused in the rebellions of Germany. In France, the charters granted by Louis the Fat could hardly be connected with the first crusade, in which the crown had taken no part, and were long prior to the second. It was not till fifty years afterward that the barons seem to have trod in his steps by granting charters to their vassals, and these do not appear to have been particularly related in time to any of the crusades. Still less can the corporations, erected by Henry II. in England, be ascribed to these holy wars, in which our country had hitherto taken no considerable share.

Causes of granting them not to be found in the crusades.

The establishment of chartered towns in France has also been ascribed to deliberate policy. "Louis the Gross," says Robertson, "in order to create some power that might counterbalance those potent vassals who controlled or gave law to the crown, first adopted the plan of conferring new privileges on the towns situated within his own domain." Yet one does not immediately perceive what strength the king could acquire by granting these extensive privileges within his own domains, if the great vassals were only weakened, as he asserts afterward, by following his example. In what sense, besides, can it be meant, that Noyon or Amiens, by obtaining certain franchises, became a power that could counterbalance the Duke of Normandy or Count of Champagne? It is more natural to impute this measure, both in the king and his barons, to their pecuniary exigencies; for we could hardly doubt that their concessions were sold at the highest price, even if the existing charters did not exhibit the fullest proof of it.* It is obvious, however, that the coarser methods of rapine must have grown obsolete, and the rights of the inhabitants of towns to property established, before they could enter into any compact with their lord for the purchase of liberty. Guibert, abbot of St. Nogent, near Laon, relates the establishment of a community in that city with circumstances that, in the main, might probably occur in any other place. Continual acts of violence and robbery having been committed, which there was no police adequate to prevent, the clergy and principal inhabitants agreed to enfranchise the populace for a sum of money, and to bind the whole society by regulations for general security. These conditions were gladly accepted; the money was paid, and the leading men swore to maintain the priv

Nor in deliberate policy.

Circumstances attending the treaty of Laon.

firms to the inhabitants of that city all the franchises which they already possess. These seem however to be confined to exemption from paying rent, and from any jurisdiction below that of an officer deputed by the count.—De Marca, Marca Hispanica, p. 1038. Another grant occurs in the same volume, p. 909, from the Bishop of Barcelona in favour of a town of his diocess. By some inattention, Robertson has quoted these charters as granted to "two villages in the county of Rousillon."—Hist. Charles V., note 16. The charters of Tortosa and Lerida in 1149 do not contain any grant of jurisdiction, p. 1303.

The corporate towns in France and England always enjoyed fuller privileges than these Catalonian charters impart. The essential characteristics of a commune, according to M. Bréquigny, were:—an association confirmed by charter; a code of fixed sanctioned customs; and a set of privileges, always including municipal or elective government.—Ordonnances, ubi supra, p. 3. A distinction ought however to be pointed out, which is rather liable to escape observation, between communes, or corporate towns, and boroughs (bourgeoisies). The main difference was, that in the latter there was no elective government, the magistrates being appointed by the king or other superior. In the possession of fixed privileges and exemptions, in the personal liberty of their inhabitants, and in the certainty of their legal usages, there was no distinction between corporate towns and mere boroughs; and indeed it is agreed that every corporate town was a borough, though every borough was not a corporation †. The French antiquary quoted above does not trace these inferior communities or boroughs higher than the charters of Louis VI. But we find the name, and a good deal of the substance, in England under William the Conqueror, as is manifest from Domesday-Book.

* Ordonnances des Rois, t. xi., préface, p. 18 et 50.

† The preface to the twelfth volume of Ordonnances des Rois contains a full account of *bourgeoisies*, as that term is the eleventh does of *communes*. A great part of it however, is applicable to both species, or rather to the genus and the species.—See too that to the fourteenth volume of Recueil des Historiens, p. 74.

ileges of he inferior freemen. The Bishop of Laon, who happened to be absent, at first opposed this new institution, but was ultimately induced by money to take a similar oath; and the community was confirme by the king. Unluckily for himself, the bishop afterward annulled the charter; when the inhabitants, in despair at seeing themselves reduced to servitude, rose and murdered him. This was in 1112; and Guibert's narrative certainly does not support the opinion that charters of community procceded from the policy of government. He seems to have looked upon them with the jealousy of a feudal abbot, and blames the Bishop of Amiens for consenting to such an establishment in his city, from which, according to Guibert, many evils resulted. In his sermons, we are told, this abbot used to descant on "those execrable communities, where serfs, against law and justice, withdraw themselves from the power of their lords."*

In some cases they were indebted for success to their own courage and love of liberty. Oppressed by the exactions of their superiors, they had recourse to arms, and united themselves in a common league confirmed by oath, for the sake of redress. One of these associations took place at Mans as early as 1067, and, though it did not produce any charter of privileges, is a proof of the spirit to which ultimately the superior classes were obliged to submit.† Several charters bear witness that this spirit of resistance was justified by oppression. Louis VII. frequently declares the tyranny exercised over the towns to be his motive for enfranchising them. Thus the charter of Mantes in 1150 is said to be given pro nimiâ oppressione pauperum: that of Compiegne in 1153, propter enormitates clericorum: that of Dourlens, granted by the Count of Ponthieu in 1202, propter injurias et molestias a potentibus terræ burgensibus frequenter illatas.‡

The extent of their privileges.

The privileges which these towns of France derived from their charters were surprisingly extensive; especially if we do not suspect some of them to be merely in confirmation of previous usages. They were made capable of possessing common property, and authorized to use a common seal as the symbol of their incorporation. The more oppressive and ignominious tokens of subjection, such as the fine paid to the lord for permission to marry their children, were abolished. Their payments of rent or tribute were limited both in amount and as to the occasions when they might be demanded: and these were levied by assessors of their own electing. Some obtained an exemption from assisting their lord in war; others were only bound to follow him when he personally commanded; and almost all limited their service to one, or at the utmost very few days. If they were persuaded to extend its duration, it was, like that of feudal tenants, at the cost of their superior. Their customs, as to succession and other matters of private right, were reduced to certainty, and, for the most part, laid down in the charter of incorporation. And the observation of these was secured by the most valuable privilege which the chartered towns obtained: that of exemption from the jurisdiction, as well of the royal as the territorial judges. They were subject only to that of magistrates, either wholly elected by themselves, or in some places, with a greater or less participation of choice in the lord. They were empowered to make special rules, or, as we call them, by-laws, so as not to contravene the provisions of their charter or the ordinances of the king.*

Connexion of free towns with the king.

It was undoubtedly far from the intention of those barons who conferred such immunities upon their subjects to relinquish their own superiority and rights not expressly conceded. But a remarkable change took place in the beginning of the thirteenth century, which affected, in a high degree, the feudal constitution of France. Towns, distrustful of their lord's fidelity, sometimes called in the king as guarantee of his engagements. The first stage of royal interference led to a more extensive measure. Philip Augustus granted letters of safeguard to communities dependant upon the barons, assuring to them his own protection and patronage.† And this was followed up so quickly by the court, if we believe some writers, that in the next reign, Louis VIII. pretended to the immediate sovereignty over all chartered towns, in exclusion of their original lords.‡ Nothing, perhaps,

* Hist. Littéraire de la France, t. x., 448. Du Cange, voc. Communia.

† Recueil des Historiens, t. xiv., préface, p. 66.

‡ Ordonnances des Rois, t. xi., préface, p. 17

* Ordonnances des Rois, préfaces aux tomes xi. et xii. Du Cange, voc. Communia, Hostis. Carpentier, Suppl. ad Du Cange, v. Hostis. Mably Observations sur l'Hist. de France, l. iii., c. 7.

† Mably, ibid.

‡ Reputat ut civitates omnes suas esse, in quibus communiæ essent. I mention this in deference to Du Cange, Mably, and others, who assume the

had so decisive an effect in subverting the feudal aristocracy. The barons perceived too late, that for a price long since lavished in prodigal magnificence or useless warfare, they had suffered the source of their wealth to be diverted, and the nerves of their strength to be severed. The government prudently respected the privileges secured by charter. Philip the Long established an officer in all large towns to preserve peace by an armed police; but, though subject to the orders of the crown, he was elected by the burgesses; and they took a mutual oath of fidelity to each other. Thus shielded under the king's mantle, they ventured to encroach upon the neighbouring lords, and to retaliate for the long oppression of the commonalty.* Every citizen was bound by oath to stand by the common cause against all aggressors, and this obligation was abundantly fulfilled. In order to swell their numbers, it became the practice to admit all who came to reside within their walls to the rights of burghership, even though they were villeins, appertenant to the soil of a master, from whom they had escaped.† Others, having obtained the same privileges, continued to dwell in the country; but, upon any dispute with their lords, called in the assistance of their community. Philip the Fair, erecting certain communes in Languedoc, gave to any who would declare on oath that he was aggrieved by the lord or his officers, the right of being admitted a burgess of the next town, upon paying one mark of silver to the king, and purchasing a tenement of a definite value. But the neglect of this condition, and several other abuses, are enumerated in an instrument of Charles V., redressing the complaints made by the nobility and rich ecclesiastics of the neighbourhood.* In his reign the feudal independence had so completely yielded, that the court began to give in to a new policy, which was ever after pursued; that of maintaining the dignity and privileges of the noble class against those attacks which wealth and liberty encouraged the plebeians to make upon them.

Maritime towns peculiarly independent.

The maritime towns of the south of France entered into separate alliances with foreign states; as Narbonne with Genoa in 1166, and Montpelier in the next century. At the death of Raymond VII, Avignon, Arles, and Marseilles affected to set up republican governments; but they were soon brought into subjection.† The independent character of maritime towns was not peculiar to those of the southern provinces. Edward II. and Edward III. negotiated, and entered into alliances with the towns of Flanders, to which neither their count, nor the King of France were parties.‡ Even so late as the reign of Louis XI., the Duke of Burgundy did not hesitate to address the citizens of Rouen, in consequence of the capture of some ships, as if they had formed an independent state.§ This evidently arose out of the ancient customs of private warfare, which, long after they were repressed by a stricter police at home, continued with lawless violence on the ocean, and gave a character of piracy to the commercial enterprise of the middle ages

fact as incontrovertible; but the passage is only in a monkish chronicler, whose authority, were it even more explicit, would not weigh much in a matter of law. Beaumanoir, however, sixty years afterward, lays it down, that no one can erect a commune without the king's consent, c. 50, p. 268. And this was an unquestionable maxim in the fourteenth century.—Ordonnances, t. xi., p. 29.

* In the charter of Philip Augustus to the town of Roye in Picardy, we read: If any stranger, whether noble or villein, commits a wrong against the town, the mayor shall summon him to answer for it; and, if he does not obey the summons, the mayor and inhabitants may go and destroy his house, in which we (the king) will lend them our assistance, if the house be too strong for the burgesses to pull down: except the case of one of our vassals, whose house shall not be destroyed; but he shall not be allowed to enter the town, till he has made amends at the discretion of the mayor and jurats.—Ordonnances des Rois, t. xi., p. 228. This summary process could only, as I conceive, be employed, if the house was situated within the jurisdiction of the commune.—See charter of Crespy, id., p. 253. In other cases, the application for redress was to be made in the first instance to the lord of the territory wherein the delinquent resided. But, upon his failing to enforce satisfaction, the mayor and jurats might satisfy themselves; liceat justitiam querere, prout poterunt; that is, might pull down his house, provided they could. Mably positively maintains the communes to have had the right of levying war, l. iii., c. 7. And Bréquigny seems to coincide with him.—Ordonnances, préface, p. 46. See also Hist. de Languedoc, t. iii., p. 115. The territory of a commune was called Pax (p. 185); an expressive word.

† One of the most remarkable privileges of chartered towns was that of conferring freedom on runaway serfs, if they were not reclaimed by their masters within a certain time. This was a pretty general law. Si quis nativus quietè per unum annum et unum diem in aliquâ villâ privilegiatâ manserit, ita quod in eorum communem gyldam tanquam civis receptus fuerit, eo ipso à villenagio liberabitur.—Glanvil., l. v., c. 5. The cities of Languedoc had the same privilege.—Vaissette, t. iii. p. 528, 530. And the editor of the Ordonnances speaks of it as general, p. 44. A similar custom was established in Germany; but the term of prescription was, in some places at least, much longer than a year and a day.—Pfeffel, t. i., p. 294.

* Martenne, Thesaur. Anecd., t. i., p 1515

† Velly, t. iv., p. 446; t. v., p. 97.

‡ Rymer, t. iv, passim.

§ Garnier, t. xvii., p. 396.

Notwithstanding the forces which in opposite directions assailed the feudal system, from the enhancement of royal prerogative, and the elevation of the chartered towns, its resistance would have been much longer but for an intrinsic decay. No political institution can endure, which does not rivet itself to the hearts of men by ancient prejudice or acknowledged interest. The feudal compact had originally much of this character. Its principle of vitality was warm and active. In fulfilling the obligations of mutual assistance and fidelity by military service, the energies of friendship were awakened, and the ties of moral sympathy superadded to those of positive compact. While private wars were at their height, the connexion of lord and vassal grew close and cordial, in proportion to the keenness of their enmity towards others. It was not the object of a baron to disgust and empoverish his vavassors by enhancing the profits of seigniory; for there was no rent of such price as blood, nor any labour so serviceable as that of the sword.

Military service of feudal tenants commuted for money.

But the nature of feudal obligation was far better adapted to the partial quarrels of neighbouring lords than to the wars of kingdoms. Customs, founded upon the poverty of the smaller gentry, had limited their martial duties to a period never exceeding forty days, and diminished according to the subdivisions of the fief. They could undertake an expedition, but not a campaign; they could burn an open town, but had seldom leisure to besiege a fortress. Hence, when the kings of France and England were engaged in wars, which, on our side at least, might be termed national, the inefficiency of the feudal militia became evident. It was not easy to employ the military tenants of England upon the frontiers of Normandy and the Isle of France, within the limits of their term of service. When, under Henry II. and Richard I., the scene of war was frequently transferred to the Garonne or the Charente, this was still more impracticable. The first remedy to which sovereigns had recourse, was to keep their vassals in service after the expiration of their forty days, at a stipulated rate of pay.* But this was frequently neither convenient to the tenant, anxious to return back to his household, nor to the king, who could not readily defray the charges of an army.† Something was to be devised more adequate to the exigency, though less suitable to the feudal spirit. By the feudal law, the fief was, in strictness, forfeited by neglect of attendance upon the lord's expedition. A milder usage introduced a fine, which however, was generally rather heavy and assessed at discretion. An instance of this kind has been noticed in an earlier part of the present chapter, from the muster-roll of Philip the Bold's expedition against the Count de Foix. The first Norman kings of England made these amercements very oppressive. But when a pecuniary payment became the regular course of redeeming personal service, which, under the name of escuage, may be referred to the reign of Henry II., it was essential to liberty that the military tenant should not lie at the mercy of the crown.* Accordingly, one of the most important provisions contained in the Magna Charta of John, secures the assessment of escuage in parliament. This is not renewed in the character of Henry III., but the practice during his reign was conformable to its spirit.

The feudal military tenures had superseded that earlier system of public defence, which called upon every man, and especially upon every landholder, to protect his country.† The relations of a vas-

* Du Cange, et Carpentier, voc. Hostis.

† There are several instances where armies broke up, at the expiration of their limited term of service, in consequence of disagreement with the sovereign. Thus, at the siege of Avignon in 1226 Theobald, count of Champagne, retired with his troops, that he might not promote the king's designs upon Languedoc. At that of Angers in 1230 nearly the same thing occurred.—M. Paris, p. 308

* Madox, Hist. of Exchequer, c. 16, conceives that escuage may have been levied by Henry I.; the earliest mention of it, however, in a record, is under Henry II. in 1159.—Lyttleton's Hist. of Henry II., vol. iv., p. 13.

† Every citizen, however extensive may be his privileges, is naturally bound to repel invasion A common rising of the people in arms, though not always the most convenient mode of resistance is one to which all governments have a right to resort. Volumus, says Charles the Bald, ut cujuscunque nostrum homo, in cujuscunque regno sit, cum seniore suo in hostem, vel aliis suis utilitatibus pergat: nisi talis regni invasio, quam *Lantweri* dicunt (quod absit), acciderit, ut omnis populus illius regni ad eam repellendam communiter pergat.—Baluzii Capitularia, t. ii., p. 44. This very ancient mention of the *Landwehr*, or insurrectional militia, so signally called forth in the present age, will strike the reader. The obligation of bearing arms in defensive war was peculiarly incumbent on the freeholder, or allodialist. It made part of the trinoda necessitas, in England, erroneously confounded by some writers with a feudal military tenure But when these latter tenures became nearly universal, the original principles of public defence were almost obliterated; and I know not how far allodial proprietors, where they existed, were called upon for service. Kings did not, however, always dispense with such aid as the lower people could

sal came in place of those of a subject and a citizen. This was the revolution of the ninth century. In the twelfth and thirteenth, another innovation rather more gradually prevailed, and marks the third period in the military history of Europe. Mercenary troops were substituted for the feudal militia. Undoubtedly there could never have been a time when valour was not to be purchased with money; nor could any employment of surplus wealth be more natural either to the ambitious or the weak; but we cannot expect to find numerous testimonies of facts of this description.* In public national history, I am aware of no instance of what may be called a regular army (unless we consider the Antrustions of the Merovingian kings as such), more ancient than the body-guards, or huscarles, of Canute the Great. These select troops amounted to six thousand men, on whom he probably relied to ensure the subjection of England. A code of martial law, compiled for their regulation, is extant in substance; and they are reported to have displayed a military spirit of mutual union, of which their master stood in awe.†

Employment of mercenary troops.

Harold II. is also said to have had Danish soldiers in pay. But the most eminent example in that age of a mercenary army, is that by whose assistance William achieved the conquest of England. His torians concur in representing this force to have consisted of sixty thousand men. He afterward hired soldiers from various regions to resist an invasion from Norway. William Rufus pursued the same course. Hired troops did not, however, in general form a considerable portion of armies, till the wars of Henry II. and Philip Augustus. Each of these monarchs took into pay large bodies of mercenaries, chiefly, as we may infer from their appellation of Brabançons, enlisted from the Netherlands. These were always disbanded on cessation of hostilities: and unfit for any habits but of idleness and license, oppressed the peasantry and ravaged the country without control. But their soldier-like principles of indiscriminate obedience, still more than their courage and field-discipline, rendered them dear to kings, who dreaded the free spirit of a feudal army. It was by such a foreign force that John saw himself on the point of abrogating the Great Charter, and reduced his barons to the necessity of tendering his kingdom to a prince of France.*

It now became manifest, that the probabilities of war inclined to the party who could take the field with selected and experienced soldiers. The command of money was the command of armed hirelings, more sure and steady in battle, as we must confess with shame, than the patriot citizen. Though the nobility still composed in a great degree the strength of an army, yet they served in

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supply. Louis the Fat called out the militia of towns and parishes under their priests, who marched at their head, though they did not actually command them in battle. In the charters of incorporation which towns received, the number of troops required was usually expressed. These formed the infantry of the French armies, perhaps more numerous than formidable to an enemy. In the war of the same prince with the Emperor Henry V., all the population of the frontier provinces was called out; for the militia of the counties of Rheims and Chalons is said to have amounted to sixty thousand men. Philip IV. summoned one foot-soldier for every twenty hearths to take the field after the battle of Courtrai.—(Daniel, Hist. de la Milice Française. Velly, t. iii., p. 62; t. vii., p. 287.) Commissions of array, either to call out the whole population, or, as was more common, to select the most serviceable by forced impressment, occur in English records from the reign of Edward I.—(Stuart's View of Society, p. 400.) And there are even several writs directed to the bishops, enjoining them to cause all ecclesiastical persons to be arrayed and armed on account of an expected invasion.—Rymer, t. vi., p. 726 (46 E. III.); t. vii., p. 162 (1 R. II.); and t. viii., p. 270 (3 H. IV.).

* The preface to the eleventh volume of Recueil des Historiens, p. 232, notices the word solidarii, for hired soldiers, as early as 1030. It was probably unusual at that time; though in Roger Hoveden, Ordericus Vitalis, and other writers of the twelfth century, it occurs not very unfrequently. We may perhaps conjecture the abbots, as both the richest and most defenceless, to have been the first who availed themselves of mercenary valour.

† For these facts, of which I remember no mention in English history, I am indebted to the Danish collection of Langebek, Scriptores Rerum Danicarum Medii Ævi. Though the Leges Castrenses Canuti Magni, published by him, t. iii., p. 1, are not in their original statutory form, they proceed from the pen of Sweno, the earliest Danish historian, who lived under Waldemar I., less than a century and a half after Canute. I apply the word huscarle, familiar in Anglo-Saxon documents, to these military retainers, on the authority of Langebek in another place, t. ii., p. 454. The object of Canute's institutions was to produce a uniformity of discipline and conduct among his soldiers, and thus to separate them more decidedly from the people. They were distinguished by their dress and golden ornaments. Their manners towards each other were regulated; quarrels and abusive words subjected to a penalty. All disputes, even respecting lands, were settled among themselves at their general parliament. A singular story is told, which if false, may still illustrate the traditionary character of these guards: that Canute having killed one of their body in a fit of anger, it was debated whether the king should incur the legal penalty of death and this was only compromised by his kneeling on a cushion before the assembly, and awaiting their permission to rise, t. iii., p. 150.

* Matt. Paris.

a new character; their animating spirit was that of chivalry rather than of feudal tenure; their connexion with a superior was personal rather than territorial. The crusades had probably a material tendency to effectuate this revolution, by substituting what was inevitable in those expeditions, a voluntary stipendiary service for one of absolute obligation.* It is the opinion of Daniel, that in the thirteenth century all feudal tenants received pay, even during their prescribed term of service.† This does not appear consonant to the law of fiefs; yet their poverty may often have rendered it impossible to defray the cost of equipment on distant expeditions. A large proportion of the expense must in all cases have fallen upon the lord; and hence that perpetually increasing taxation, the effects whereof we have lately been investigating.

A feudal army, however, composed of all tenants in chief and their vassals, still presented a formidable array. It is very long before the paradox is generally admitted, that numbers do not necessarily contribute to the intrinsic efficiency of armies. Philip IV. assembled a great force, by publishing the arrière-ban, or feudal summons, for his unhappy expedition against the Flemings. A small and more disciplined body of troops would not, probably, have met with the discomfiture of Courtray. Edward I. and Edward II. frequently called upon those who owed military service, in their invasions of Scotland.‡ But in the French wars of Edward III., the whole, I think, of his army served for pay, and was raised by contract with men of rank and influence, who received wages for every soldier according to his station and the arms he bore. The rate of pay was so remarkably high, that unless we imagine a vast profit to have been intended for the contractors, the private lancers and even archers must have been chiefly taken from the middling classes, the smaller gentry, or rich yeomanry, of England.* This part of Edward's military system was probably a leading cause of his superiority over the French, among whom the feudal tenantry were called into the field, and swelled their unwieldy armies at Crecy and Poitiers. Both parties, however, in this war employed mercenary troops. Philip had 15,000 Italian crossbowmen at Crecy. It had for some time before become the trade of soldiers of fortune, to enlist under leaders of the same description as themselves in companies of adventure, passing from one service to another, unconcerned as to the cause in which they were retained. These military adventurers played a more remarkable part in Italy than in France, though not a little troublesome to the latter country. The feudal tenures had at least furnished a royal native militia, whose duties, though much limited in the extent, were defined by usage, and enforced by principle. They gave place in an evil hour for the people, and eventually for sovereigns, to contracts with mutinous hirelings, frequently strangers, whose valour in the day of battle inadequately redeemed their bad faith and vexatious rapacity. France, in her calamitous period under Charles VI. and Charles VII., experienced the full effects of military licentiousness. At the expulsion of the English, robbery and disorder were substituted for the more specious plundering of war. Perhaps few measures have ever been more popular, as few certainly have been more politic, than the establishment of regular companies of troops by an ordinance of Charles VII., in 1444.† These may justly pass for the first example of a standing army in Europe; though some Italian princes had retained troops constantly in their pay, but prospectively to hostilities, which were seldom long intermitted. Fifteen companies were composed, each of a hundred men at arms,

Establishment of a regular force by Charles VII.

* Joinville, in several passages, intimates that most of the knights serving in St. Louis's crusade received pay, either from their superior lord, if he were on the expedition, or from some other, into whose service they entered for the time. He set out himself with ten knights, whom he afterward found it difficult enough to maintain.—Collection des Mémoires, t. i., p. 49, and t. ii., p. 53.

† Hist. de la Milice Française, p. 84.

The use of mercenary troops prevailed much in Germany during the thirteenth century.—Schmidt, t. iv., p. 89. In Italy, it was also very common; though its general adoption is to be referred to the commencement of the succeeding age.

‡ Rymer, t. iii., p. 173, 189, 199, et alibi sæpius.

* Many proofs of this may be adduced from Rymer's Collection. The following is from Brady's History of England, vol. ii., Appendix, p. 86. The wages allowed by contract, in 1346, were for an earl, 6*s.* 8*d.* per day; for barons and bannerets, 4*s.*; for knights, 2*s.*; for squires, 1*s.*; for archers and hobelers (light cavalry), 6*d.*; for archers on foot, 3*d.*; for Welshmen, 2*d.* These sums, multiplied by about 24, to bring them on a level with the present value of money, will show the pay to have been extremely high. The cavalry, of course, furnished themselves with horses and equipments, as well as arms, which were very expensive.—See too Chap. I., p. 52 of this work.

† The estates at Orleans in 1439 had advised this measure, as is recited in the preamble of the ordinance.—Ordonnances des Rois, t. xii., p. 312

or lancers; and, in the language of that age, the whole body was one thousand five hundred lances. But each lancer had three archers, a coutiller, or soldier armed with a knife, and a page or valet attached to him, all serving on horseback: so that the fifteen companies amounted to nine thousand cavalry.* From these small beginnings, as they must appear in modern times, arose the regular army of France, which every succeeding king was solicitous to augment. The ban was sometimes convoked, that is, the possessors of fiefs were called upon for military service in subsequent ages; but with more of ostentation than real efficiency.

Decay of feudal principles.

The feudal compact, thus deprived of its original efficacy, soon lost the respect and attachment which had attended it. Homage and investiture became unmeaning ceremonies; the incidents of relief and aid were felt as burdensome exactions. And indeed the rapacity with which these were levied, especially by our Norman sovereigns and their barons, was of itself sufficient to extinguish all the generous feelings of vassalage. Thus galled, as it were, by the armour which he was compelled to wear, but not to use, the military tenant of England looked no longer with contempt upon the owner of land in soccage, who held his estate with almost the immunities of an allodial proprietor. But the profits which the crown reaped from wardships, and perhaps the prejudices of lawyers, prevented the abolition of military tenures, till the restoration of Charles II. In France, the fiefs of noblemen were very unjustly exempted from all territorial taxation; though the tailles of later times had, strictly speaking, only superseded the aids to which they had been always liable. This distinction, it is well known, was not annihilated till that event which annihilated all distinctions, the French revolution.

It is remarkable, that, although the feudal sytem established in England upon the conquest broke in very much upon our ancient Saxon liberties; though it was attended with harsher servitudes than in any other country, particularly those two intolerable burdens, wardship and marriage; yet it has in general been treated with more favour by English than French writers. The hardiness with which the ancient barons resisted their sovereign, and the noble struggles which they made for civil liberty, especially in that Great Charter, the basement, at least, if not the foundation, of our free constitution, have met with a kindred sympathy in the bosoms of Englishmen while, from an opposite feeling, the French have been shocked at that aristocratic independence, which cramped the prerogatives, and obscured the lustre, of their crown. Yet it is precisely to this feudal policy that France is indebted for that which is ever dearest to her children, their national splendour and power. That kingdom would have been irretrievably dismembered in the tenth century, if the laws of feudal dependance had not preserved its integrity. Empires of unwieldy bulk, like that of Charlemagne, have several times been dissolved by the usurpation of provincial governors, as is recorded both in ancient history and in that of the Mahometan dynasties in the East. What question can there be, that the powerful dukes of Guienne or counts of Toulouse would have thrown off all connexion with the crown of France, when usurped by one of their equals, if the slight dependance of vassalage had not been substituted for legitimate subjection to a sovereign?

It is the previous state of society under the grandchildren of Charlemagne which we must always keep in mind, if we would appreciate the effects of the feudal system upon the welfare of mankind. The institutions of the eleventh century must be compared with those of the ninth, not with the advanced civilization of modern times. If the view that I have taken of those dark ages is correct, the state of anarchy, which we usually term feudal, was the natural result of a vast and barbarous empire feebly administered, and the cause, rather than effect, of the general establishment of feudal tenures. These, by preserving the mutual relations of the whole, kept alive the feeling of a common country and common duties; and settled, after the lapse of ages, into the free constitution of England, the firm monarchy of France, and the federal union of Germany.

General estimate of the advantages and evils resulting from the feudal system.

The utility of any form of polity may be estimated, by its effect upon national greatness and security, upon civil liberty and private rights, upon the tranquillity and order of society, upon the increase and diffusion of wealth, or upon the general tone of moral sentiment and energy. The feudal constitution was certainly, as has been observed already, little adapted for

* Daniel, Hist. de la Milice Française, p. 266. Villaret, Hist. de France, t. xv., p. 394

the defence of a mighty kingdom, far less for schemes of conquest. But as it prevailed alike in several adjacent countries, none had any thing to fear from the military superiority of its neighbours. It was this inefficiency of the feudal militia, perhaps, that saved Europe during the middle ages from the danger of universal monarchy. In times when princes had little notion of confederacies for mutual protection, it is hard to say what might not have been the successes of an Otho the Great, a Frederick Barbarossa, or a Philip Augustus, if they could have wielded the whole force of their subjects whenever their ambition required. If an empire equally extensive with that of Charlemagne, and supported by military despotism, had been formed about the twelfth or thirteenth centuries, the seeds of commerce and liberty, just then beginning to shoot, would have perished: and Europe, reduced to a barbarous servitude, might have fallen before the free barbarians of Tartary.

If we look at the feudal polity as a scheme of civil freedom, it bears a noble countenance. To the feudal law it is owing, that the very names of right and privilege were not swept away, as in Asia, by the desolating hand of power. The tyranny which, on every favourable moment, was breaking through all barriers, would have rioted without control, if, when the people were poor and disunited, the nobility had not been brave and free. So far as the sphere of feudality extended, it diffused the spirit of liberty, and the notions of private right. Every one, I think, will acknowledge this, who considers the limitations of the services of vassalage, so cautiously marked in those law-books which are the records of customs, the reciprocity of obligation between the lord and his tenant, the consent required in every measure of a legislative or a general nature, the security, above all, which every vassal found in the administration of justice by his peers, and even (we may in this sense say) in the trial by combat. The bulk of the people, it is true, were degraded by servitude, but this had no connexion with the feudal tenures.

The peace and good order of society were not promoted by this system. Though private wars did not originate in the feudal customs, it is impossible to doubt that they were perpetuated by so convenient an institution, which indeed owed its universal establishment to no other cause. And as predominant habits of warfare are totally irreconcilable with those of industry, not merely by the immediate works of destruction which render its efforts unavailing, but through that contempt of peaceful occupations which they produce, the feudal system must have been intrinsically adverse to the accumulation of wealth, and the improvement of those arts, which mitigate the evils or abridge the labours of mankind.

But as the school of moral discipline, the feudal institutions were perhaps most to be valued. Society had sunk, for several centuries after the dissolution of the Roman empire, into a condition of utter depravity; where, if any vices could be selected as more eminently characteristic than others, they were falsehood treachery, and ingratitude. In slowly purging off the lees of this extreme corruption, the feudal spirit exerted its ameliorating influence. Violation of faith stood first in the catalogue of crimes, most repugnant to the very essence of a feudal tenure, most severely and promptly avenged, most branded by general infamy. The feudal law-books breathe throughout a spirit of honourable obligation. The feudal course of jurisdiction promoted, what trial by peers is peculiarly calculated to promote, a keener feeling and readier perception of moral as well as of leading distinctions. And as the judgment and sympathy of mankind are seldom mistaken in these great points of veracity and justice, except through the temporary success of crimes, or the want of a definite standard of right, they gradually recovered themselves, when law precluded the one and supplied the other. In the reciprocal services of lord and vassal, there was ample scope for every magnanimous and disinterested energy. The heart of man, when placed in circumstances which have a tendency to excite them, will seldom be deficient in such sentiments. No occasions could be more favourable than the protection of a faithful supporter, or the defence of a beneficent suzerain, against such powerful aggression, as left little prospect except of sharing in his ruin.

From these feelings, engendered by the feudal relation, has sprung up the peculiar sentiment of personal reverence and attachment towards a sovereign which we denominate loyalty; alike distinguishable from the stupid devotion of eastern slaves, and from the abstract respect with which free citizens regard their chief magistrate. Men who had been used to swear fealty, to profess subjection, to for-

low, at home and in the field, a feudal superior and his family, easily transferred the same allegiance to the monarch. It was a very powerful feeling, which could make the bravest men put up with slights and ill treatment at the hands of their sovereign; or call forth all the energies of disinterested exertion for one whom they never saw, and in whose character there was nothing to esteem. In ages when the rights of the community were unfelt, this sentiment was one great preservative of society; and, though collateral or even subservient to more enlarged principles, it is still indispensable to the tranquillity and permanence of every monarchy. In a moral view, loyalty has scarcely perhaps less tendency to refine and elevate the heart than patriotism itself; and holds a middle place in the scale of human motives, as they ascend from the grosser inducements of self-interest, to the furtherance of general happiness and conformity to the purposes of infinite Wisdom.

CHAPTER III.

THE HISTORY OF ITALY, FROM THE EXTINCTION OF THE CARLOVINGIAN EMPERORS TO THE INVASION OF NAPLES BY CHARLES VIII.

PART I.

State of Italy after the death of Charles the Fat.—Coronation of Otho the Great.—State of Rome.—Conrad II.—Union of the Kingdom of Italy with the Empire.—Establishment of the Normans in Naples and Sicily.—Roger Guiscard.—Rise of the Lombard Cities.—They gradually become more independent of the Empire.—Their Internal Wars.—Frederick Barbarossa.—Destruction of Milan.—Lombard League.—Battle of Legnano.—Peace of Constance.—Temporal Principality of the Popes.—Guelf and Ghibelin Factions.—Otho IV.—Frederick II.—Arrangement of the Italian Republics.—Second Lombard War.—Extinction of the House of Swabia.—Causes of the Success of Lombard Republics.—Their prosperity—and Forms of Government.—Contentions between the Nobility and People.—Civil Wars.—Story of Giovanni di Vicenza.*

State of Italy at the end of the ninth century.

At the death of Charles the Fat in 888, that part of Italy which acknowledged the supremacy of the western empire was divided, like France and Germany, among a few powerful vassals, hereditary governors of provinces. The principal of these were the dukes of Spoleto and

* The authorities upon which this chapter is founded, and which do not always appear at the foot of the page, are chiefly the following. 1. Muratori's Annals of Italy (twelve volumes in 4to. or eighteen in 8vo.) comprehend a summary of its history from the beginning of the Christian era to the peace of Aix la Chapelle. The volumes relating to the middle ages, into which he has digested the original writers contained in his great collection, Scriptores Rerum Italicarum, are by much the best; and of these, the part which extends from the seventh or eighth to the end of the twelfth century, is the fullest and most useful. Muratori's accuracy is in general almost implicitly to be trusted, and his plain integrity speaks in all his writings; but his mind was not philosophical enough to discriminate the wheat from the chaff, and his habits of life induced him to annex an imaginary importance to the dates of diplomas and other inconsiderable matters. His narrative presents a mere skeleton devoid of juices; and besides its intolerable aridity, it labours under that confusion which a merely chronological arrangement of concurrent and independent events must always produce. 2. The dissertations on Italian Antiquities, by the same writer, may be considered either as one or two works. In Latin, they form six volumes in folio, enriched with a great number of original documents. In Italian, they are freely translated by Muratori himself, abridged, no doubt, and without most of the original instruments, but well furnished with quotations, and abundantly sufficient for most purposes. They form three volumes in quarto. I have in general quoted only the number of the dissertation, on account of the variance between the Latin and Italian works: in cases where the page is referred to, I have indicated, by the title, which of the two I intend to vouch. 3. St. Marc, a learned and laborious Frenchman, has written a chronological abridgment of Italian history, somewhat in the manner of Hénault, but so strangely divided by several parallel columns in every page, that I could hardly name a book more inconvenient to the reader. His knowledge, like Muratori's, lay a good deal in points of minute inquiry; and he is chiefly to be valued in ecclesiastical history. The work descends only to the thirteenth century. 4. Denina's Rivoluzioni d'Italia, originally published in 1769, is a perspicuous and lively book, in which the principal circumstances are well selected. It is not perhaps free from errors in fact, and still less from those of opinion; but, till lately, I do not know from what source a general acquaintance with the history of Italy could have been so easily derived. 5. The publication of M. Sismondi's Histoire des Républiques Italiennes has thrown a blaze of light around the most interesting, at least in many respects, of Europe in countries during the middle ages. I am happy to bear witness, so far as my own studies have enabled me, to the learning and diligence of this writer; qualities which the world is sometimes apt not to suppose, where they perceive so much elo quence and philosophy. I cannot express my opin

Tuscany, the marquises of Ivrea, Susa, and Friuli. The great Lombard dutchy of Benevento, which had stood against the arms of Charlemagne, and comprised more than half the present kingdom of Naples, had now fallen into decay, and was straitened by the Greeks in Apulia, and by the principalities of Capua and Salerno, which had been severed from its own territory, on the opposite coast.*

And in the first part of the tenth.

Though princes of the Carlovingian line continued to reign in France, their character was too little distinguished to challenge the obedience of Italy, already separated by family partitions from the Transalpine nations; and the only contest was among her native chiefs. One of these, Berenger, originally Marquis of Friuli, or the March of Treviso, reigned for thirty-six years, but with continually disputed pretensions; and, after his death, the calamities of Italy were sometimes aggravated by tyranny, and sometimes by intestine war. The Hungarians desolated Lombardy; the southern coasts were infested by the Saracens, now masters of Sicily. Plunged in an abyss, from which she saw no other means of extricating herself, Italy lost sight of her favourite independence, and called in the assistance of Otho the First, king of Germany. Little opposition was made to this powerful monarch. Berenger II., the reigning sovereign of Italy, submitted to hold the kingdom of him as a fief.* But some years afterward, new disturbances arising, Otho descended from the Alps a second time [A. D. 961], deposed Berenger, and received at the hands of Pope John XII. the imperial dignity which had been suspended for nearly forty years.

Otho the Great.

Every ancient prejudice, every recollection, whether of Augustus or of Charlemagne, had led the Italians to annex the notion of sovereignty to the name of Roman emperor; nor were Otho, or his two immediate descendants, by any means inclined to waive these supposed prerogatives, which they were well able to enforce. Most of the Lombard princes acquiesced without apparent repugnance in the new German government, which was conducted by Otho the Great with much prudence and vigour, and occasionally with severity. The citizens of Lombardy were still better satisfied with a change, that ensured a more tranquil and regular administration than they had experienced under the preceding kings. But in one, and that the chief of Italian cities, very different sentiments were prevalent. We find, indeed, a considerable obscurity spread over the internal history of Rome, during the long period from the recovery of Italy by Belisarius to the end of the eleventh century. The popes appear to have possessed some measure of temporal power, even while the city was professedly governed by the exarchs of Ravenna, in the name of the eastern empire. This power became more extensive after her separation from Constantinople. It was, however, subordinate to the undeniable sovereignty of the new imperial family, who were supposed to enter upon all the rights of their predecessors. There was always an imperial officer, or prefect, in that city, to render criminal justice; an oath of allegiance to the emperor was taken by the people; and upon any irregular election of a pope, a circumstance by no means unusual, the emperors held

Internal state of Rome

lon of M. Sismondi in this respect more strongly than by saying that his work has almost superseded the annals of Muratori; I mean from the twelfth century, before which period his labour hardly begins. Though doubtless not more accurate than Muratori, he has consulted a much more extensive list of authors; and, considered as a register of facts alone, his history is incomparably more useful. These are combined in so skilful a manner, as to diminish, in a great degree, that inevitable confusion which arises from frequency of transition and want of general unity. It is much to be regretted, that from too redundant details of unnecessary circumstances, and sometimes, if I may take the liberty of saying so, from unnecessary reflections, M. Sismondi has run into a prolixity which will probably intimidate the languid students of our age. It is the more to be regretted, because the History of Italian Republics is calculated to produce a good far more important than storing the memory with historical facts, that of communicating to the reader's bosom some sparks of the dignified philosophy, the love for truth and virtue, which live along its eloquent pages. 6. To Muratori's collection of original writers, the Scriptores Rerum Italicarum, in twenty-four volumes in folio, I have paid considerable attention; perhaps there is no volume of it which I have not more or less consulted. But, after the annals of the same writer, and the work of M. Sismondi, I have not thought myself bound to repeat a laborious search into all the authorities upon which those writers depend. The utility, for the most part, of perusing original and contemporary authors, consists less in ascertaining mere facts, than in acquiring that insight into the spirit and temper of their times, which it is utterly impracticable for any compiler to impart. It would be impossible for me to distinguish what information I have derived from these higher sources; in cases, therefore, where no particular authority is named, I would refer to the writings of Muratori and Sismondi, especially the latter, as the substratum of the following chapter.

* Giannone, Istoria Civile di Napoli, l. vi[illegible] mondi. Hist. des Républiques Italiennes [illegible] 244

* Muratori, A. D. 951. Denina, Rivoluzione [illegible]ana. l. ix [illegible] 6

themselves entitled to interpose. But the spirit and even the institutions of the Romans were republican. Amid the darkness of the tenth century, which no contemporary historian dissipates, we faintly distinguish the awful names of senate, consuls, and tribunes, the domestic magistracy of Rome. These shadows of past glory strike us at first with surprise; yet there is no improbability in the supposition, that a city so renowned and populous, and so happily sheltered from the usurpation of the Lombards, might have preserved, or might afterward establish, a kind of municipal government, which it would be natural to dignify with those august titles of antiquity.* During that anarchy which ensued upon the fall of the Carlovingian dynasty, the Romans acquired an independence which they did not deserve. The city became a prey to the most terrible disorders; the papal chair was sought for at best by bribery, or controlling influence, often by violence and assassination; it was filled by such men as naturally rise by such means, whose sway was precarious, and generally ended either in their murder or degradation. For many years the supreme pontiffs were forced upon the church by two women of high rank, but infamous reputation, Theodora and her daughter Marozia. The kings of Italy, whose election in a diet of Lombard princes and bishops at Roncaglia was not conceived to convey any pretension to the sovereignty of Rome, could never obtain any decided influence in papal elections, which were the object of struggling factions among the resident nobility. In this temper of the Romans, they were ill disposed to resume habits of obedience to a foreign sovereign. The next year after Otho's coronation [A. D. 972], they rebelled, the pope at their head; but were of course subdued without difficulty. The same republican spirit broke out whenever the emperors were absent in Germany, especially during the minority of Otho III., and directed itself against the temporal superiority of the pope. But when that emperor attained manhood, he besieged and took the city, crushing all resistance by measures of severity; and especially by the execution of the consul Crescentius, a leader of the popular faction, to whose instigation the tumultuous license of Rome was principally ascribed.†

At the death of Otho III. without children, in 1002, the compact between Italy and the emperors of the house of Saxony was determined. Her engagement of fidelity was certainly not applicable to every sovereign whom the princes of Germany might raise to their throne. Accordingly Ardoin, marquis of Ivrea, was elected king of Italy. But a German party existed among the Lombard princes and bishops, to which his insolent demeanour soon gave a pretext for inviting Henry II., the new king of Germany, collaterally related to their late sovereign. Ardoin was deserted by most of the Italians, but retained his former subjects in Piedmont, and disputed the crown for many years with Henry, who passed very little time in Italy. During this period there was hardly any recognised government; and the Lombards became more and more accustomed, through necessity, to protect themselves, and to provide for their own internal police. Meanwhile the German nation had become odious to the Italians. The rude soldiery, insolent and addicted to intoxication, were engaged in frequent disputes with the citizens, wherein the latter, as is usual in similar cases, were exposed first to the summary vengeance of the troops, and afterward to penal chastisement for sedition.* In one of these tumults, at the entry of Henry II., in 1004, the city of Pavia was burnt to the ground, which inspired its inhabitants with a constant animosity against that emperor. Upon his death in 1024, the Italians were disposed to break once more their connexion with Germany, which had elected as sovereign Conrad, duke of Franconia. They offered their crown to Robert, king of France, and to William, duke of Guienne; but neither of them was imprudent enough to involve himself in the difficult and faithless politics of Italy. It may surprise us that no candidate appeared from among her native princes. But it had been the dexterous policy of the Othos to weaken the great Italian fiefs, which were still rather considered as hereditary governments than as absolute patrimonies, by separating districts from their jurisdiction, under inferior marquises and rural counts.† The bishops were incapable of becoming competitors, and generally attached to

Henry II and Ardoin

* Muratori, A. D. 967, 987, 1015, 1087. Sismondi, t. i., p. 155.

† Sismondi, t. i., p. 164, makes a patriot hero of Crescentius. But we know so little of the man or the times, that it seems better to follow the common tenour of history, without vouching for the accuracy of its representations.

* Muratori, A. D. 1027, 1037.

† Denina, l. ix., c. 11. Muratori, Antiq. Ital. Dissert. 8. Annali d'Italia, A. D. 989.

the German party. The cities already possessed material influence, but were disunited by mutual jealousies. [A. D. 1024.] Since ancient prejudices, there fore, precluded a federate league of independent principalities and republics, for which perhaps the actual condition of Italy unfitted her, Eribert, archbishop of Milan, accompanied by some other chief men of Lombardy, repaired to Constance, and tendered the crown to Conrad, which he was already disposed to claim as a sort of dependance upon Germany. It does not appear that either Conrad or his successors were ever regularly elected to reign over Italy;* but whether this ceremony took place or not, we may certainly date from that time the subjection of Italy to the Germanic body. It became an unquestionable maxim, that the votes of a few German princes conferred a right to the sovereignty of a country which had never been conquered, and which had never formally recognised this superiority.† But it was an equally fundamental rule, that the elected king of Germany could not assume the title of Roman emperor, until his coronation by the pope. The middle appellation of King of the Romans was invented as a sort of approximation to the imperial dignity. But it was not till the reign of Maximilian that the actual coronation at Rome was dispensed with, and the title of emperor taken immediately after the election.

Election of Conrad II.

The period between Conrad of Franconia and Frederick Barbarossa, or from about the middle of the eleventh to that of the twelfth century, is marked by three great events in Italian history; the struggle between the empire and the papacy for ecclesiastical investitures, the establishment of the Norman kingdom in Naples, and the formation of distinct and nearly independent republics among the cities of Lombardy. The first of these will find a more appropriate place in a subsequent chapter, where I shall trace the progress of ecclesiastical power. But it produced a long and almost incessant state of disturbance in Italy; and should be mentioned at present as one of the main causes which excited in that country a systematic opposition to the imperial authority.

The southern provinces of Italy, in the beginning of the eleventh century, were chiefly subject to the Greek empire, which had latterly recovered part of its losses, and exhibited some ambition and enterprise, though without any intrinsic vigour. They were governed by a lieutenant, styled Catapan,* who resided at Bari in Apulia. On the Mediterranean coast, three dutchies, or rather republics, of Naples, Gaeta, and Amalfi, had for several ages preserved their connexion with the Greek empire, and acknowledged its nominal sovereignty. The Lombard principalities of Benevento, Salerno, and Capua, had much declined from their ancient splendour. The Greeks were, however, not likely to attempt any further conquests: the court of Constantinople had relapsed into its usual indolence; nor had they much right to boast of successes, rather due to the Saracen auxiliaries, whom they hired from Sicily No momentous revolution apparently threatened the south of Italy, and least of all could it be anticipated from what quarter the storm was about to gather.

Greek provinces of southern Italy.

The followers of Rollo, who rested from plunder and piracy in the quiet possession of Normandy, became devout professors of the Christian faith, and particularly addicted to the custom of pilgrimage, which gratified their curiosity and spirit of adventure. In small bodies, well armed, on account of the lawless character of the countries through which they passed, the Norman pilgrims visited the shrines of Italy and even the Holy Land. Some of these, very early in the eleventh century, were engaged by a Lombard prince of Salerno against the Saracens, who had invaded his territory; and through that superiority of valour, and perhaps of corporal strength, which this singular people seem to have possessed above all other Europeans, they made surprising havoc among the enemy.† This exploit led to fresh engage-

Settlement of the Normans at Aversa.

* Muratori, A. D. 1026. It is said afterward, p. 367, that he was a Romanis ad Imperatorem electus. The people of Rome therefore preserved their nominal right of concurring in the election of an emperor. Muratori, in another place, A. D. 1040, supposes that Henry III. was chosen king of Italy, though he allows that no proof of it exists; and there seems no reason for the supposition.

† Gunther, the poet of Frederick Barbarossa, expresses this not inelegantly: —

Romani gloria regni
Nos penes est; quemcunque sibi Germania regem
Præficit, hunc dives submisso vertice Roma
Accipit, et verso Tiberim regit ordine Rhenus.

Gunther, Ligurinus ap. Struvium Corpus Hist. German., p. 266.

Yet it appears from Otho of Frisingen, an unquestionable authority, that some Italian nobles concurred, or at least were present and assisting, in the election of Frederick himself, l. ii., c. i.

* Catapanus, from κατὰ πᾶν, one employed in the general administration of affairs.

† Giannone, t. ii, p. 7 [edit. 1753]. I should ob

ments, and these engagements drew new adventurers from Normandy; they founded the little city of Aversa near Capua, and were employed by the Greeks against the Saracens of Sicily. But, though performing splendid services in this war, they were ill repaid by their ungrateful employers; and being by no means of a temper to bear with injury, they revenged themselves by a sudden invasion of Apulia. This province was speedily subdued, and divided among twelve Norman counts [A. D. 1042]; but soon afterward Robert Guiscard, one of twelve brothers, many of whom were renowned in these Italian wars, acquired the sovereignty; and adding Calabria to his conquests [A. D. 1057], put an end to the long dominion of the Eastern emperors in Italy.* He reduced the principalities of Salerno and Benevento, in the latter instance sharing the spoil with the pope, who took the city to himself, while Robert retained the territory. His conquests in Greece, which he invaded with the magnificent design of overthrowing the Eastern empire, were at least equally splendid, though less durable. [A. D. 1061.] Roger, his younger brother, undertook meanwhile the romantic enterprise, as it appeared, of conquering the Island of Sicily, with a small body of Norman volunteers. But the Saracens were broken into petty states, and discouraged by the bad success of their brethren in Spain and Sardinia. After many years of war, Roger became sole master of Sicily, and took the title of count The son of this prince, upon the extinction of Robert Guiscard's posterity, united the two Norman sovereignties, and subjugating the free republics of Naples and Amalfi, and the principality of Capua [A. D. 1127], established a boundary which has hardly been changed since his time.†

Conquests of Robert Guiscard.

The first successes of these Norman leaders were viewed unfavourably by the popes. Leo IX. marched in person against Robert Guiscard with an army of German mercenaries, but was beaten and made prisoner in this unwise enterprise, the scandal of which nothing but good fortune could have lightened. He fell, however, into the hands of a devout people, who implored his absolution for the crime of defending themselves; and whether through gratitude, or as the price of his liberation, invested them with their recent conquests in Apulia as fiefs of the Holy See. This investiture was repeated and enlarged, as the popes, especially in their contention with Henry IV. and Henry V., found the advantage of using the Normans as faithful auxiliaries. Finally, Innocent II., in 1139, conferred upon Roger the title of King of Sicily. It is difficult to understand by what pretence these countries could be claimed by the see of Rome in sovereignty, unless by virtue of the pretended donation of Constantine, or that of Louis the Debonair, which is hardly less suspicious;* and, least of all, how Innocent II. could surrender the liberties of the city of Naples, whether that was considered as an independent republic, or as a portion of the Greek empire. But the Normans, who had no title but their swords, were naturally glad to give an appearance of legitimacy to their conquest; and the kingdom of Naples, even in the hands of the most powerful princes in Europe, never ceased to pay a feudal acknowledgment to the chair of St. Peter.

Papal investitures of Naples.

The revolutions which time brought forth on the opposite side of Italy were still more interesting. Under the Lombard and French princes, every city with its adjacent district was subject to the government and jurisdiction of a count, who was himself subordinate to the duke or marquis of the province. From these counties it was the practice of the first German emperors to dismember particular towns or tracts of country, granting them upon a feudal tenure to rural lords, by many of whom also the same title was assumed. Thus by degrees the authority of the original officers was confined almost to the walls of their own cities; and in many cases the bishops obtained a grant of the temporal government,† and exercised the functions which had belonged to the count

Progress of the Lombard cities.

serve, that St. Marc, a more critical writer in examination of facts than Giannone, treats this first adventure of the Normans as unauthenticated. —Abrégé Chronologique, p. 990.

* The final blow was given to the Greek domination over Italy by the capture of Bari, in 1071, after a siege of four years. It had for some time been confined to this single city.—Muratori, St. Marc.

† M. Sismondi has excelled himself in describing the conquest of Amalfi and Naples by Roger Guiscard (t. i., c. 4); warming his imagination with visions of liberty and virtue in those obscure republics, which no real history survives to dispel.

* Muratori presumes to suppose, that the interpolated, if not spurious, grants of Louis the Debonair, Otho I., and Henry II., to the see of Rome, were promulgated about the time of the first concessions to the Normans, in order to give the popes a colourable pretext to dispose of the southern provinces of Italy. A. D 1059.

† Muratori, Antiquit. Italiæ, Dissert. 8. Annali d'Italia, A. D. 989. Anti hita Estensi, p. 26

It is impossible to ascertain the time at which the cities of Lombardy began to assume a republican form of government, or to trace with precision the gradations of their progress. The last historian of Italy asserts, that Otho the First erected them into municipal communities, and permitted the election of their magistrates; but of this he produces no evidence; and Muratori, from whose authority it is rash to depart without strong reasons, is not only silent about any charters, but discovers no express unequivocal testimonies of a popular government for the whole eleventh century.* The first appearance of the citizens acting for themselves, is in a tumult at Milan, in 991, when the archbishop was expelled from the city.† But this was a transitory ebullition, and we must descend lower for more specific proofs. It is possible that the disputed succession of Ardoin and Henry, at the beginning of the eleventh age, and the kind of interregnum which then took place, gave the inhabitants an opportunity of choosing magistrates, and of sharing in public deliberations. A similar relaxation indeed of government in France, had exposed the people to greater servitude, and established a feudal aristocracy. But the feudal tenures seem not to have produced in Italy that systematic and regular subordination which existed in France during the same period; nor were the mutual duties of the relation between lord and vassal so well understood or observed. Hence we find not only disputes, but actual civil war between the lesser gentry or vavassors, and the higher nobility, their immediate superiors. These differences were adjusted by Conrad the Salic, who published a remarkable edict in 1037, by which the feudal law of Italy was reduced to more certainty.‡ From this disunion among the members of the feudal confederacy, it was more easy for the citizens to render themselves secure against its dominion. The cities, too, of Lombardy, were far more populous and better defended than those of France; they had learned to stand sieges in the Hungarian invasions of the tenth century, and had acquired the right of protecting themselves by strong fortifications. Those which had been placed under the temporal government of their bishops had peculiar advantages in struggling for emancipation.* This circumstance in the state of Lombardy I consider as highly important towards explaining the subsequent revolution. Notwithstanding several exceptions, a churchman was less likely to be bold and active in command than a soldier; and the sort of election which was always necessary, and sometimes more than nominal on a vacancy of the see, kept up among the citizens a notion that the authority of their bishop and chief magistrate emanated in some degree from themselves. In many instances, especially in the church of Milan, the earliest, perhaps, and certainly the most famous of Lombard republics, there occurred a disputed election; two, or even three competitors, claimed the archiepiscopal functions, and were compelled, in the absence of the emperors, to obtain the exercise of them by means of their own faction among the citizens.†

These were the general causes, which, operating at various times during the eleventh century, seem gradually to have

* Sismondi, t. i., p. 97, 384. Muratori, Dissert. 49.

† Muratori, Annali d'Italia.

‡ Ibid. St Marc.

* The bishops seem to have become counts, or temporal governors of their sees, about the end of the tenth, or before the middle of the eleventh century.—Muratori, Dis. 8. Denina, l. ix., c. 11. St. Marc, A. D. 1041, 1047, 1070. In Arnulf's History of Milan, written before the close of the latter age, we have a contemporary evidence. And from the perusal of that work I should infer, that the archbishop was, in the middle of the 11th century, the chief magistrate of the city. But, at the same time, it appears highly probable, that an assembly of the citizens, or at least a part of the citizens, partook in the administration of public affairs.—Muratori, Scriptores Rerum Italicarum, t. iv., p. 16, 22, 23, and particularly the last. In most cities to the eastward of the Tesino, the bishops lost their temporal authority in the twelfth century, though the archbishop of Milan had no small prerogatives while that city was governed as a republic. But in Piedmont they continued longer in the enjoyment of power. Vercelli and even Turin were almost subject to their respective prelates till the thirteenth century. For this reason among others, the Piedmontese cities are hardly to be reckoned among the republics of Lombardy.—Denina, Istoria dell'Italia Occidentale, t. i., p. 191.

† Muratori, A. D. 1345. Sometimes the inhabitants of a city refused to acknowledge a bishop named by the emperor, as happened at Pavia and Asti about 1057.—Arnulf, p. 22. This was, in other words, setting up themselves as republics. But the most remarkable instance of this kind occurred in 1070, when the Milanese absolutely rejected Godfrey, appointed by Henry IV., and after a resistance of several years, obliged the emperor to fix upon another person. The city had been previously involved in long and violent tumults, which, though rather belonging to ecclesiastical than civil history, as they arose out of the endeavours made to reform the conduct and enforce the celibacy of the clergy, had a considerable tendency to diminish the archbishop's authority, and to give a republican character to the inhabitants. These proceedings are told at great length by St. Marc, t. iii., A. D. 1056-1077. Arnulf and Landulf are the original sources

produced a republican form of government in the Italian cities. But this part of history is very obscure. The archives of all cities before the reign of Frederick Barbarossa have perished. For many years there is a great deficiency of contemporary Lombard historians, and those of a later age, who endeavoured to search into the antiquities of their country, have found only some barren and insulated events to record. We perceive, however, throughout the eleventh century, that the cities were continually in warfare with each other. This, indeed, was according to the manners of that age, and no inference can absolutely be drawn from it as to their internal freedom. But it is observable, that their chronicles speak, in recording these transactions, of the people, and not of their leaders, which is the true republican tone of history. Thus, in the Annals of Pisa, we read under the years 1002 and 1004, of victories gained by the Pisans over the people of Lucca; in 1006, that the Pisans and Genoese conquered Sardinia.* These annals indeed are not by a contemporary writer, nor perhaps of much authority. But we have an original account of a war that broke out in 1057, between Pavia and Milan, in which the citizens are said to have raised armies, made alliances, hired foreign troops, and in every respect acted like independent states.† There was, in fact, no power left in the empire to control them. The two Henrys IV and V. were so much embarrassed during the quarrel concerning investitures, and the continual troubles of Germany, that they were less likely to interfere with the rising freedom of the Italian cities, than to purchase their assistance by large concessions. Henry IV. granted a charter to Pisa, in 1081, full of the most important privileges, promising even not to name any marquis of Tuscany without the people's consent;‡ and it is possible, that although the instruments have perished, other places might obtain similar advantages. However this may be, it is certain that, before the death of Henry V., in 1125, almost all the cities of Lombardy, and many among those of Tuscany, were accustomed to elect their own magistrates, and to act as independent communities, in waging war and in domestic government.*

The territory subjected originally to the count or bishop of these cities had been reduced, as I mentioned above, by numerous concessions to the rural nobility. But the new republics, deeming themselves entitled to all which their former governors had once possessed, began to attack their nearest neighbours, and to recover the sovereignty of all their ancient territory. They besieged the castles of the rural counts, and successively reduced them into subjection. They suppressed some minor communities which had been formed, in imitation of themselves, by little towns belonging to their district. Sometimes they purchased feudal superiorities or territorial jurisdictions, and, according to a policy not unusual with the stronger party, converted the rights of property into those of government.† Hence, at the middle of the twelfth century, we are assured by a contemporary writer, that hardly any nobleman could be found except the Marquis of Montferrat, who had not submitted to some city.‡ We may except also, I should presume, the families of Este and Malaspina, as well as that of Savoy. Muratori produces many charters of mutual compact between the nobles and the neighbouring cities; whereof one invariable article is, that the former should reside within the walls a certain number of months in the year.◊ The rural nobility, thus deprived of the independence which had endeared their castles, imbibed a new ambition of directing the municipal government of the cities, which, during the first period of the republics, was chiefly in the hands of the superior families. It was the sagacious policy of the Lombards to invite settlers by throwing open to them the privileges of citizenship, and sometimes they even bestowed them by compulsion. Some-

Their acquisitions of territory

* Murat., Diss. 45. Arnulfus, the historian of Milan, makes no mention of any temporal counts, which seems to be a proof that there were none in any authority. He speaks always of Mediolanenses, Papienses, Ravenates, &c. This history was written about 1085, but relates to the earlier part of that century. That of Landulfus corroborates this supposition, which indeed is capable of proof as to Milan and several other cities in which the temporal government had been legally vested in the bishops.

† Murat., Diss. 45. Arnulf., Hist. Mediolan., p. 22.

‡ Murat., Dissert 45

* Murat., Annali d'Ital., A. D. 1107.

† Il dominio utile delle città e de' villaggi era tal volta diviso fra due o più padroni, ossia che s'assegnassero a ciascuno diversi quartieri, o si divi dessero i proventi della gabelle, ovvero che l'uno signore godesse d'una spezie della giurisdizione, e l'altro d'un' altra.—Denina, l. xii., c. 3. This produced a vast intricacy of titles, which w course advantageous to those who wanted text for robbing their neighbours.

‡ Otho Frising ns., l. ii., c. 13.

◊ Murat., Diss. 49.

times a city, imitating the wisdom of ancient Rome, granted these privileges to all the inhabitants of another.* Thus the principal cities, and especially Milan, reached, before the middle of the twelfth century, a degree of population very far beyond that of the capitals of the great kingdoms. Within their strong walls and deep trenches, and in the midst of their well-peopled streets, the industrious dwelt secure from the license of armed pillagers and the oppression of feudal tyrants. Artisans, whom the military landholders contemned, acquired and deserved the right of bearing arms for their own and the public defence.† Their occupations became liberal, because they were the foundation of their political franchises; the citizens were classed in companies according to their respective crafts; each of which had its tribune or standard-bearer (gonfalonier), at whose command, when any tumult arose or enemy threatened, they rushed in arms to muster in the market-place.

Their mutual animosities.

But, unhappily, we cannot extend the sympathy, which institutions so full of liberty create, to the national conduct of these little republics. Their love of freedom was alloyed by that restless spirit, from which a democracy is seldom exempt, of tyrannising over weaker neighbours. They played over again the tragedy of ancient Greece, with all its circumstances of inveterate hatred, unjust ambition, and atrocious retaliation, though with less consummate actors upon the scene. Among all the Lombard cities, Milan was the most conspicuous, as well for power and population, as for the abuse of those resources by arbitrary and ambitious conduct. Thus, in 1111, they razed the town of Lodi to the ground, distributing the inhabitants among six villages, and subjecting them to an unrelenting despotism.‡ Thus, in 1118, they commenced a war of ten years' duration with the little city of Como; but the surprising perseverance of its inhabitants procured for them better terms of capitulation, though they lost their original independence. The Cremonese treated so harshly the town of Crema, that it revolted from them, and put itself under the protection of Milan. Cities of more equal forces carried on interminable hostilities by wasting each other's territory, destroying the harvests, and burning the villages.

Sovereignty of the emperors.

The sovereignty of the emperors, meanwhile, though not very effective, was in theory always admitted. Their name was used in public acts, and appeared upon the coin. When they came into Italy, they had certain customary supplies of provisions called fodrum regale, at the expense of the city where they resided; during their presence, all inferior magistracies were suspended, and the right of jurisdiction devolved upon them alone But such was the jealousy of the Lombards, that they built the royal palaces without their gates; a precaution to which the emperors were compelled to submit. This was at a very early time a subject of contention between the inhabitants of Pavia and Conrad II., whose palace, seated in the heart of the city, they had demolished in a sedition, and were unwilling to rebuild in that situation.*

Frederick Barbarossa.

Such was the condition of Italy when Frederick Barbarossa, duke of Swabia, and nephew of the last emperor, Conrad III., ascended the throne of Germany. His accession forms the commencement of a new period, the duration of which is about one hundred years, and which is terminated by the death of Conrad IV., the last emperor of the house of Swabia. It is characterized, like the former, by three distinguishing features in Italian history; the victorious struggle of the Lombard and other cities for independence, the final establishment of a temporal sovereignty over the middle provinces by the popes, and the union of the kingdom of Naples to the dominions of the house of Swabia.

In Frederick Barbarossa the Italians found a very different sovereign from the two last emperors, Lothaire and Conrad III., who had seldom appeared in

* Murat., Diss. 49.

† Otho Frisingensis ap. Murat. Scr. Rer. Ital., t. vi., p. 708. Ut etiam ad comprimendos vicinos materiâ non careant, inferioris ordinis juvenes, vel quoslibet contemptibilium etiam mechanicarum artium opifices, quos cæteræ gentes ab honestioribus et liberioribus studiis tanquam pestem propellunt, ad militiæ cingulum, vel dignitatum gradus assumere non dedignantur. Ex quo factum est, ut cæteris orbis civitatibus, divitiis et potentiâ præemineant.

‡ The animosity between Milan and Lodi was of very old standing. It originated, according to Arnulf, in the resistance made by the inhabitants of the latter city to an attempt made by Archbishop Eribert to force a bishop of his own nomination upon them. The bloodshed, plunder, and conflagrations which had ensued, would, he says, fill a volume if they were related at length.—Scriptores Rerum Italic., t. iv., p. 16. And this is the testimony of a writer who did not live beyond 1085 Seventy years more, either of hostility or servitude elapsed, before Lodi was permitted to respire.

* Otho Frisingensis. p. 710. Muratori, A. D 1027

Italy, and with forces quite inadequate to control such insubordinate subjects. The distinguished valour and ability of this prince rendered a severe and arbitrary temper, and a haughty conceit of his imperial rights, more formidable. He believed, or professed to believe, the magnificent absurdity, that, as successor of Augustus, he inherited the kingdoms of the world. In the same right he more powerfully, if not more rationally, laid claim to the entire prerogatives of the Roman emperors over their own subjects; and in this the professors of the civil law, which was now diligently studied, lent him their aid with the utmost servility. To such a disposition the self-government of the Lombard cities appeared mere rebellion. Milan, especially, the most renowned of them all, drew down upon herself his inveterate resentment. He found, unfortunately, too good a pretence in her behaviour towards Lodi. Two natives of that ruined city threw themselves at the emperor's feet, imploring him, as the ultimate source of justice, to redress the wrongs of their country. It is a striking proof of the terror inspired by Milan, that the consuls of Lodi disavowed the complaints of their countrymen, and the inhabitants trembled at the danger of provoking a summary vengeance, against which the imperial arms seemed no protection.* The Milanese, however, abstained from attacking the people of Lodi, though they treated with contempt the emperor's order to leave them at liberty. Frederick, meanwhile, came into Italy, and held a diet at Roncaglia, where complaints poured in from many quarters against the Milanese. Pavia and Cremona, their ancient enemies, were impatient to renew hostilities under the imperial auspices. Brescia, Tortona, and Crema were allies, or rather dependants, of Milan. Frederick soon took occasion to attack the latter confederacy. Tortona was compelled to surrender, and levelled to the ground. But a feudal army was soon dissolved; the emperor had much to demand his attention at Rome, where he was on ill terms with Adrian IV.; and when the imperial troops were withdrawn from Lombardy, the Milanese rebuilt Tortona, and expelled the citizens of Lodi from their dwellings. Frederick assembled a fresh army, to which almost every city of Lombardy willingly or by force, contributed its militia. It is said to have exceeded a hundred thousand men. The Milanese shut themselves up within their walls; and perhaps might have defied the imperial forces, if their immense population, which gave them confidence in arms, had not exposed them to a different enemy. Milan was obliged by hunger to capitulate, upon conditions not very severe, if a vanquished people could ever safely rely upon the convention that testifies their submission.

[A. D. 1158.] Frederick, after the surrender of Milan, held a diet at Ron- Diet of caglia, where the effect of his vic- Roncaglia. tories was fatally perceived. The bishops, the higher nobility, the lawyers, vied with one another in exalting his prerogatives. He defined the regalian rights, as they were called, in such a manner as to exclude the cities and private proprietors from coining money, and from tolls or territorial dues, which they had for many years possessed. These, however, he permitted them to retain for a pecuniary stipulation. A more important innovation was the appointment of magistrates, with the title of podestà, to administer justice, concurrently with the consuls; but he soon proceeded to abolish the latter office in many cities, and to throw the whole government into the hands of his own magistrates. He prohibited the cities from levying war against each other. It may be presumed, that he showed no favour to Milan. The capitulation was set at naught in its most express provisions; a podestà was sent to supersede the consuls, and part of the territory taken away. Whatever might be the risk of resistance, and the Milanese had experienced enough not to undervalue it, they were determined rather to see their liberties at once overthrown, than gradually destroyed by a faithless tyrant. They availed themselves of the absence of his army to renew the war. Its issue was more calamitous than that of the last. Almost all Lombardy lay patient under subjection. The small town of Crema, always the faithful ally of Milan, stood a memorable siege against the imperial army; but the inhabitants were ultimately compelled to capitulate for their lives, and the vindictive Cremonese razed their dwellings to the ground.* But all smaller

* See an interesting account of these circumstances in the narrative of Otho Morena, a citizen of Lodi.—Script Rer. Ital., t. vi., p. 966. M. Sismondi, who reproaches Morena for partiality towards Frederick in the Milanese war, should have remembered the provocations of Lodi.—Hist. des Républ. Ital., t. ii., p. 102.

* The siege of Crema is told at great length by Otto Morena; it is interesting, not only as a display of extraordinary, though unsuccessful, perseverance and intrepidity, but as the most detailed account of the methods used in the attack and de

Capture and destruction of Milan.

calamities were forgotten, when the great city of Milan, worn out by famine rather than subdued by force, was reduced to surrender at discretion. Lombardy stood in anxious suspense to know the determination of Frederick respecting this ancient metropolis, the seat of the early Christian emperors, and second only to Rome in the hierarchy of the Latin church. A delay of three weeks excited fallacious hopes; but, at the end of that time, an order was given to the Milanese to evacuate their habitations. The deserted streets were instantly occupied by the imperial army; the people of Pavia and Cremona, of Lodi and Como, were commissioned to revenge themselves on the respective quarters of the city assigned to them; and in a few days the pillaged churches stood alone amid the ruins of what had been Milan.

[A. D. 1162.] There was now little left of that freedom to which Lombardy had aspired: it was gone like a pleasant dream, and she awoke to the fears and miseries of servitude. Frederick obeyed the dictates of his vindictive temper, and of the policy usual among statesmen. He abrogated the consular regimen in some even of the cities which had supported him, and established his podestà in their place. This magistrate was always a stranger, frequently not even an Italian; and he came to his office with all those prejudices against the people he was to govern, which cut off every hope of justice and humanity. The citizens of Lombardy, especially the Milanese, who had been dispersed in the villages adjoining their ruined capital, were unable to meet the perpetual demands of tribute. In some parts, it is said, two thirds of the produce of their lands, the only wealth that remained, were extorted from them by the imperial officers. It was in vain that they prostrated themselves at the feet of Frederick. He gave at the best only vague promises of redress; they were in his eyes rebels, his delegates had acted as faithful officers, whom, even if they had gone a little beyond his intentions, he could not be expected to punish.

But there still remained, at the heart of Lombardy, the strong principle of national liberty, imperishable among the perishable armies of her patriots, inconsumable in the conflagration of her cities.*

Those whom private animosities had led to assist the German conqueror, blushed at the degradation of their country, and at the share they had taken in it. [A. D. 1167.] A league was secretly formed, in which Cremona, one of the chief cities on the imperial side, took a prominent part. Those beyond the Adige, hitherto no much engaged in the disputes of central Lombardy, had already formed a separate confederacy, to secure themselves from encroachments, which appeared the more unjust as they had never borne arms against the emperor. [A. D. 1164.] Their first successes corresponded to the justice of their cause; Frederick was repulsed from the territory of Verona, a fortunate augury for the rest of Lombardy. These two clusters of cities, on the east and west of the Adige, now united themselves into the famous Lombard League, the terms of which were settled in a general diet. Their alliance was to last twenty years; during which they pledged themselves to mutual assistance against any one who should exact more from them than they had been used to perform from the time of Henry, to the first coming of Frederick into Italy; implying in this the recovery of their elective magistracies, their rights of war and peace, and those lucrative privileges, which, under the name of regalian, had been wrested from them in the diet of Roncaglia.*

League of Lombardy against Frederick.

This union of the Lombard cities was formed at a very favourable juncture. Frederick had, almost ever since his accession, been engaged in open hostility with the see of Rome, and was pursuing the fruitless policy of Henry IV., who had endeavoured to substitute an antipope of his own faction for the legitimate pontiff. In the prosecution of this scheme he had besieged Rome with a great army which, the citizens resisting longer than he expected, fell a prey to the autumnal pestilence that visits the neighbourhood

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fence of fortified places, before the introduction of artillery.—Scrip. Rer. Ital., t. vi., p. 1032–1052.

* Quæ neque Dardaniis campis potuere perire,
Nec cum capta capi, nec cum combusta cremari.
Ennius.

* For the nature and conditions of the Lombard league, besides the usual authorities, see Muratori's 48th dissertation. The words, a tempore Henrici Regis usque ad introitum imperatoris Frederici, leave it ambiguous which of the Henries was intended. Muratori thinks it was Henry IV., because the cities then began to be independent. It seems, however, natural, when a king is mentioned without any numerical designation, to interpret it of the last bearing that name; as we say King William for William the Third. And certainly the liberties of Lombardy were more perfect under Henry V than his father; besides which, the one reign might still be remembered, and the other rested in tradition. The question, however, is of little moment

of that capital. The flower of German nobility was cut off by this calamity, and the emperor recrossed the Alps, entirely unable for the present to withstand the Lombard confederacy. Their first overt act of insurrection was the rebuilding of Milan; the confederate troops all joined in this undertaking; and the Milanese, still numerous, though dispersed and persecuted, revived as a powerful republic. Lodi was compelled to enter into the league; Pavia alone continued on the imperial side. As a check to Pavia, and to the Marquis of Montferrat, the most potent of the independent nobility, the Lombards planned the erection of a new city between the confines of these two enemies, in a rich plain to the south of the Po, and bestowed upon it, in compliment to the pope, Alexander III., the name of Alessandria. Though, from its hasty construction, Alessandria was, even in that age, deemed rude in appearance, it rapidly became a thriving and populous city.* The intrinsic energy and resources of Lombardy were now made manifest. Frederick, who had triumphed by their disunion, was unequal to contend against their league. After several years of indecisive war, the emperor invaded the Milanese territory, but the confederates gave him battle, and gained a complete victory at Legnano. [A. D. 1176.] Frederick escaped alone and disguised from the field, with little hope of raising a fresh army, though still reluctant from shame to acquiesce in the freedom of Lombardy. He was at length persuaded, through the mediation of the republic of Venice, to consent to a truce of six years, the provisional terms of which were all favourable to the league. It was weakened, however, by the defection of some of its own members; Cremona, which had never cordially united with her ancient enemies, made separate conditions with Frederick, and suffered herself to be named among the cities on the imperial side in the armistice. Tortona, and even Alessandria, followed the same course during the six years of its duration; a fatal testimony of unsubdued animosities, and omen of the calamities of Italy. At the expiration of the truce, Frederick's anxiety to secure the crown for his son overcame his pride, and the famous peace of Constance [A. D. 1183] established the Lombard republics in real independence.

Battle of Legnano.

Peace of Constance

By the treaty of Constance, the cities were maintained in the enjoyment of all the regalian rights, whether within their walls or in their district, which they could claim by usage. Those of levying war, of erecting fortifications, and of administering civil and criminal justice, were specially mentioned. The nomination of their consuls, or other magistrates, was left absolutely to the citizens; but they were to receive the investiture of their office from an imperial legate. The customary tributes of provision during the emperor's residence in Italy were preserved; and he was authorized to appoint in every city a judge of appeal in civil causes. The Lombard league was confirmed, and the cities were permitted to renew it at their own discretion; but they were to take every ten years an oath of fidelity to the emperor. This just compact preserved, along with every security for the liberties and welfare of the cities, as much of the imperial prerogatives as could be exercised by a foreign sovereign, consistently with the people's happiness.*

The successful insurrection of Lombardy is a memorable refutation of that system of policy to which its advocates gave the appellation of vigorous, and which they perpetually hold forth as the only means through which a disaffected people are to be restrained. By a certain class of statesmen, and by all men of harsh and violent disposition, measures of conciliation, adherence to the spirit of treaties, regard to ancient privileges, or to those rules of moral justice which are paramount to all positive right, are always treated with derision. Terror is their only specific, and the physical inability to rebel their only security for allegiance. But if the razing of cities, the abrogation of privileges, the empoverishment and oppression of a nation, could assure its constant submission, Frederick Barbarossa would never have seen the militia of Lombardy arrayed against him at Legnano. Whatever may be the pressure upon a conquered people, there will come a moment of their recoil. Nor is it material to allege, in answer to the present instance, that the accidental destruction of Frederick's army by disease enabled the cities of Lombardy to succeed in their resistance. The fact may

* Alessandria was surnamed, in derision, della paglia: from the thatch with which the houses were covered. Frederick was very desirous to change its name to Cæsarea, as it is actually called in the peace of Constance, being at that time on the imperial side But it soon recovered its former appellation

* Muratori, Antiquitates Italiæ, Diss 50

well be disputed; since Lombardy, when united, appears to have been more than equal to a contest with any German force that could have been brought against her; but, even if we admit the effect of this circumstance, it only exhibits the precariousness of a policy, which collateral events are always liable to disturb. Providence reserves to itself various means, by which the bonds of the oppressor may be broken; and it is not for human sagacity to anticipate, whether the army of a conqueror shall moulder in the unwholesome marshes of Rome, or stiffen with frost in a Russian winter.

The peace of Constance presented a noble opportunity to the Lombards of establishing a permanent federal union of small republics; a form of government congenial from the earliest ages to Italy, and that, perhaps, under which she is again destined one day to flourish. They were entitled by the provisions of that treaty to preserve their league, the basis of a more perfect confederacy, which the course of events would have emancipated from every kind of subjection to Germany.* But dark, long-cherished hatreds, and that implacable vindictiveness which, at least in former ages, distinguished the private manners of Italy, deformed her national character, which can only be the aggregate of individual passions. For revenge she threw away the pearl of great price, and sacrificed even the recollection of that liberty, which had stalked like a majestic spirit among the ruins of Milan.† It passed away, that high disdain of absolute power, that steadiness and self-devotion, which raised the half-civilized Lombards of the twelfth century to the level of those ancient republics, from whose history our first notions of freedom and virtue are derived. The victim by turns of selfish and sanguinary factions, of petty tyrants, and of foreign invaders, Italy has fallen like a star from its place in heaven; she has seen her harvests trodden down by the horses of the stranger, and the blood of her children wasted in quarrels not their own; *Conquering or conquered*, in the indignant language of her poet, *still alike a slave*,* a long retribution for the tyranny of Rome.

Frederick did not attempt to molest the cities of Lombardy in the enjoyment of those privileges conceded by the treaty of Constance. His ambition was diverted to a new scheme for aggrandizing the house of Swabia, by the marriage of his eldest son, Henry, with Constance, the aunt and heiress of William II., king of Sicily. That kingdom, which the first monarch, Roger, had elevated to a high pitch of renown and power, fell into decay through the misconduct of his son William, surnamed the Bad, and did not recover much of its lustre under the second William, though styled the Good. His death without issue was apparently no remote event, and Constance was the sole legitimate surviver of the royal family. It is a curious circumstance, that no hereditary kingdom appears absolutely to have excluded females from its throne, except that which, from its magnitude, was of all the most secure from falling into the condition of a province. The Sicilians felt too late the defect of their constitution, which permitted an independent people to be transferred, as the dowry of a woman, to a foreign prince, by whose ministers they might justly expect to be insulted and oppressed. Henry, whose marriage with Constance took place in 1186, and who succeeded in her right to the throne of Sicily three years afterward, was exasperated by a courageous, but unsuccessful effort of the Norman barons, to preserve the crown for an illegitimate branch of the royal family; and his reign is disgraced by a series of atrocious cruelties. The power of the house of Swabia was now at its zenith on each side of the Alps; Henry received the Imperial crown the year after his father's death in the third crusade, and even prevailed upon the princes of Germany to elect his infant son Frederick as his successor. But his own premature decease clouded the prospects of his family: Constance survived him but a year; and a child of four years old was left with the inheritance of a kingdom, which his father's severity had rendered disaffected

Affairs of Sicily.

* Though there was no permanent diet of the Lombard league, the consuls and podestas of the respective cities composing it occasionally met in congress, to deliberate upon measures of general safety. Thus assembled, they were called Rectores Societatis Lombardiæ. It is evident that, if Lombardy had continued in any degree to preserve the spirit of union, this congress might readily have become a permanent body, like the Helvetic diet, with as extensive powers as are necessary in a federal constitution.—Muratori, Antichità Italiane, t. iii., p. 126, Dissert. 50. Sismondi, t. ii., p. 189.

† Anzi girar la libertà mirai,
E baciar lieta ogni ruina, e dire,
Ruine sì, ma servitù non mai.
Gaetana Passerini (ossia piuttosto Giovan Battista Pastorini) in Mathias, Componimenti Lirici, vol. iii., p. 331.

* Per servir sempre, o vincitrice o vinta.—Filicaja.

and which the leaders of German mercenaries in his service desolated and disputed.

During the minority of Frederick II from 1198 to 1216, the papal chair was filled by Innocent III.; a name second only, and hardly second, to that of Gregory VII. Young, noble, and intrepid, he united with the accustomed spirit of ecclesiastical usurpation, which no one had ever carried to so high a point, the more worldly ambition of consolidating a separate principality for the Holy See in the centre of Italy. The real or spurious donations of Constantine, Pepin, Charlemagne, and Louis, had given rise to a perpetual claim, on the part of the popes, to very extensive dominions: but little of this had been effectuated, and in Rome itself they were thwarted by the prefect, an officer who swore fidelity to the emperor, and by the insubordinate spirit of the people. In the very neighbourhood, the small cities owned no subjection to the capital, and were probably as much self-governed as those of Lombardy. One is transported back to the earliest times of the republic, in reading of the desperate wars between Rome and Tibur or Tusculum, neither of which was subjugated till the latter part of the twelfth century. At a further distance were the dutchy of Spoleto, the march of Ancona, and what had been the exarchate of Ravenna, to all of which the popes had more or less grounded pretensions. Early in the last-mentioned age, the famous Countess Matilda, to whose zealous protection Gregory VII. had been eminently indebted during his long dispute with the emperor, granted the reversion of all her possessions to the Holy See, first in the lifetime of Gregory, and again under the pontificate of Paschal III. These were very extensive, and held by different titles. Of her vast imperial fiefs, Mantua, Modena, and Tuscany, she certainly could not dispose. The dutchy of Spoleto and march of Ancona were supposed to rest upon a different footing. I confess myself not distinctly to comprehend the nature of this part of her succession. These had been formerly among the great fiefs of the kingdom of Italy. But if I understand it rightly, they had tacitly ceased to be subject to the emperors, some years before they were seized by Godfrey of Lorraine, father-in-law and stepfather of Matilda. To his son, her husband, she succeeded in the possession of those countries. They are commonly considered as her allodial or patrimonial property; yet it is not easy to see how, being herself a subject of the empire, she could transfer even her allodial estates from its sovereignty. Nor, on the other hand, can it apparently be maintained, that she was lawful sovereign of countries which had not long since been imperial fiefs, and the suzerainty over which had never been renounced. The original title of the Holy See, therefore, does not seem incontestable, even as to this part of Matilda's donation. But I state with hesitation a difficulty, to which the authors I have consulted do not advert.* It is certain, however, that the emperors kept possession of the whole during the twelfth century; and treated both Spoleto and Ancona as parts of the empire, notwithstanding continual remonstrances from the Roman pontiffs. Frederick Barbarossa, at the negotiations of Venice in 1177, promised to restore the patrimony of Matilda in fifteen years: but, at the close of that period, Henry VI. was no disposed to execute this arrangement and granted the county in fief to some of his German followers. Upon his death, the circumstances were favourable to Innocent III. The infant king of Sicily had been intrusted by Constance to his guardianship. A double election of Philip, brother of Henry VI., and of Otho, duke of Brunswick, engaged the princes of Germany, who had entirely overlooked the claims of young Frederick, in a doubtful civil war. Neither party was in a condition to enter Italy; and the imperial dignity was vacant for several years, till the death of Philip removing one competitor, Otho IV., whom the pope had constantly favoured, was crowned emperor. During this interval, the Italians had no superior; and Innocent availed himself of it to maintain the pretensions of the see. These he backed by the production of rather a questionable document, the will of Henry VI., said to have been found among the baggage of Marquard, one of the German soldiers, who had been invested with fiefs by the late emperor. The cities of what we now call the ecclesiastical state had in the twelfth century their own muni-

Innocent III.

Bequest of the Countess Matilda.

Ecclesiastical state reduced by Innocent III.

* It is almost hopeless to look for explicit information upon the rights and pretensions of the Roman see in Italian writers even of the eighteenth century. Muratori, the most learned, and, upon the whole, the fairest of them all, moves cautiously over this ground: except when the claims of Rome happen to clash with those of the house of Este. But I have not been able to satisfy myself

cipal government, like those of Lombardy; but they were far less able to assert a complete independence. They gladly, therefore, put themselves under the protection of the Holy See, which held out some prospect of securing them from Marquard, and other rapacious partisans, without disturbing their internal regulations. Thus the dutchy of Spoleto and march of Ancona submitted to Innocent III.; but he was not strong enough to keep constant possession of such extensive territories, and some years afterward adopted the prudent course of granting Ancona in fief to the Marquis of Este. He did not, as may be supposed, neglect his authority at home; the prefect of Rome was now compelled to swear allegiance to the pope, which put an end to the regular imperial supremacy over that city; and the privileges of the citizens were abridged. This is the proper era of that temporal sovereignty which the bishops of Rome possess over their own city, though still prevented by various causes, for nearly three centuries, from becoming unquestioned and unlimited.

The policy of Rome was now more clearly defined than ever. In order to preserve what she had thus suddenly gained rather by opportunity than strength, it was her interest to enfeeble the imperial power, and consequently to maintain the freedom of the Italian republics. Tuscany had hitherto been ruled by a marquis of the emperor's appointment, though her cities were flourishing, and, within themselves, independent. In imitation of the Lombard confederacy, and impelled by Innocent III., they now (with the exception of Pisa, which was always strongly attached to the empire) formed a similar league for the preservation of their rights. In this league the influence of the pope was far more strongly manifested than in that of Lombardy. Although the latter had been in alliance with Alexander III., and was formed during the height of his dispute with Frederick, this ecclesiastical quarrel mingled so little in their struggle for liberty, that no allusion to it is found in the act of their confederacy. But the Tuscan union was expressly established "for the honour and aggrandizement of the apostolic see." The members bound themselves to defend the possessions and rights of the church and not to acknowledge any king or emperor without the approbation of the supreme pontiff.* The Tuscans, accordingly, were more thoroughly attached to the church party than the Lombards, whose principle was animosity towards the house of Swabia. Hence, when Innocent III., some time after, supported Frederick II. against the Emperor Otho IV., the Milanese and their allies were arranged on the imperial side; but the Tuscans continued to adhere to the pope.

League of Tuscany.

In the wars of Frederick Barbarossa against Milan and their allies, we have seen the cities of Lombardy divided, and a considerable number of them firmly attached to the imperial interest. It does not appear, I believe, from history, though it is by no means improbable, that the citizens were at so early a time divided among themselves, as to their line of public policy, and that the adherence of a particular city to the emperor, or to the Lombard league, was only, as proved afterward the case, that one faction or another acquired an ascendency in its councils. But jealousies long existing between the different classes, and only suspended by the national struggle which terminated at Constance, gave rise to new modifications of interests, and new relations towards the empire. About the year 1200, or perhaps a little later, the two leading parties which divided the cities of Lombardy, and whose mutual animosity, having no general subject of contention, required the association of a name to direct as well as invigorate its prejudices, became distinguished by the celebrated appellations of Guelfs and Ghibelins; the former adhering to the papal side, the latter to that of the emperor. These names were derived from Germany, and had been the rallying word of faction for more than half a century in that country, before they were transported to a still more favourable soil. The Guelfs took their name from a very illustrious family, several of whom had successively been dukes of Bavaria in the tenth and eleventh centuries. The heiress of the last of these intermarried with a younger son of the house of Este, a noble family settled near Padua, and possessed of great estates on each bank of the lower Po. They gave birth to a second line of

Factions of Guelfs and Ghibelins

by the perusal of some dry and tedious dissertations in St. Marc (Abrégé Chronologique de l'Hist. de l'Italie, t. iv.), who, with learning scarcely inferior to that of Muratori, possessed more opportunity and inclination to speak out.

* Quod possessiones et jura sacrosanctæ ecclesiæ bonâ fide defenderent; et quod nullum in regem aut imperatorem reciperent, nisi quem Romanus pontifex approbaret.—Muratori, Dissert. 48 (Latin t. iv., p. 320; Italian, t. iii., p. 112).

Guelfs, from whom the royal house of Brunswick is descended. The name of Ghibelin is derived from a village in Franconia, whence Conrad the Salic came, the progenitor, through females, of the Swabian emperors. At the election of Lothaire, in 1125, the Swabian family were disappointed of what they considered almost an hereditary possession; and at this time an hostility appears to have commenced between them and the house of Guelf, who were nearly related to Lothaire. Henry the Proud, and his son, Henry the Lion, representatives of the latter family, were frequently persecuted by the Swabian emperors: but their fortunes belong to the history of Germany.* Meanwhile the elder branch, though not reserved for such glorious destinies as the Guelfs, continued to flourish in Italy; the marquises of Este were by far the most powerful nobles in eastern Lombardy, and about the end of the twelfth century began to be considered as heads of the church party in their neighbourhood. They were frequently chosen to the office of podestà, or chief magistrate, by the cities of Romagna; and in 1208, the people of Ferrara set the fatal example of sacrificing their freedom for tranquillity, by electing Azzo VII., marquis of Este, as their lord or sovereign.†

Otho IV. was son of Henry the Lion, and consequently head of the Guelfs. On his obtaining the imperial crown, the prejudices of Italian factions were diverted out of their usual channel He was soon engaged in a quarrel with the pope, whose hostility to the empire was certain. into whatever hands it might fall. In Milan, however, and generally in the cities which had belonged to the Lombard league against Frederick I., hatred of the house of Swabia prevailed more than jealousy of the imperial prerogatives; they adhered to names rather than to principles, and supported a Guelf emperor even against the pope. Terms of this description, having no definite relation to principles which it might be troublesome to learn and defend, are always acceptable to mankind, and have the peculiar advantage of precluding altogether that spirit of compromise and accommodation, by which it is sometimes endeavoured to obstruct their tendency to hate and injure each other. From this time, every city, and almost every citizen, gloried in one of these barbarous denominations. In several cities the imperial party predominated through hatred of their neighbours, who espoused that of the church. Thus the inveterate feuds between Pisa and Florence, Modena and Bologna, Cremona and Milan, threw them into opposite factions. But there was in every one of these a strong party against that which prevailed, and consequently a Guelf city frequently became Ghibelin or conversely, according to the fluctuations of the time.*

Otho IV.

The change to which we have adverted in the politics of the Guelf party lasted only during the reign of Otho IV. When the heir of the house of Swabia grew up to manhood, Innocent, who, though his guardian, had taken little care of his interests, as long as he flattered himself with the hope of finding a Guelf emperor obedient, placed the young Frederick at the head of an opposition composed of cities always attached to his family, and of such as implicitly followed the see of Rome. He met with considerable success both in Italy and Germany, and, after the death of Otho, received the imperial crown. But he had no longer to expect any assistance from the pope who conferred it. Innocent was dead, and Honorius III., his successor, could not behold without apprehension the vast power of Frederick, supported in Lombardy by a faction

Frederick II

* The German origin of these celebrated factions is clearly proved by a passage in Otho of Frisingen, who lived half a century before we find the denominations transferred to Italy.—Struvius, Corpus Hist. German., p. 378, and Muratori, A. D. 1152.

† Sismondi, t. ii., p. 329.

* For the Guelf and Ghibelin factions, besides the historians, the 51st dissertation of Muratori should be read. There is some degree of inaccuracy in his language, where he speaks of these distractions expiring at the beginning of the fifteenth century. Quel secolo, é vero, abbondò anch' esso di molte guerre, ma nulla si operò sotto nome o pretesto delle faziom suddette. Solamente ritennero esse piede in alcune private famiglie.—Antichità Italiane, t. iii., p. 148. But certainly the names of Guelf and Ghibelin, as party distinctions, may be traced all through the fifteenth century. The former faction showed itself distinctly in the insurrection of the cities subject to Milan, upon the death of Galeazzo Visconti, in 1404. It appeared again in the attempt of the Milanese to re-establish their republic in 1447.—Sismondi, t. ix., p. 334. So in 1477, Ludovico Sforza made use of Ghibelin prejudices to exclude the regent Bonne of Savoy as a Guelf.—Sismondi, t. xi., p. 79. In the ecclesiastical state, the same distinctions appear to have been preserved still later. Stefano Infessura, in 1487, speaks familiarly of them.—Script Rer. Ital. t. iii., p. 1221. And even in the conquest of Milan by Louis XII., in 1500, the Guelfs of that city are represented as attached to the French party, while the Ghibelins abetted Ludovico Sforza and Maximilian.—Guicciardini, p. 399. Other passages in the same historian show these factions to have been alive in various parts of Italy

which balanced that of the church, and menacing the ecclesiastical territories on the other side by the possession of Naples and Sicily. This kingdom, feudatory to Rome, and long her firmest ally, was now, by a fatal connexion which she had not been able to prevent, thrown into the scale of her most dangerous enemy. Hence the temporal dominion which Innocent III. had taken so much pains to establish, became a very precarious possession, exposed on each side to the attacks of a power that had legitimate pretensions to almost every province composing it. The life of Frederick II. was wasted in an unceasing contention with the church, and with his Italian subjects, whom she excited to rebellions against him. Without inveighing, like the popish writers, against this prince, certainly an encourager of letters, and endowed with many eminent qualities, we may lay to his charge a good deal of dissimulation; I will not add ambition, because I am not aware of any period in the reign of Frederick when he was not obliged to act on his defence against the aggression of others. But if he had been a model of virtues, such men as Honorius III., Gregory IX., and Innocent IV., the popes with whom he had successively to contend, would not have given him respite, while he remained master of Naples, as well as the empire.*

It was the custom of every pope to urge princes into a crusade, which the condition of Palestine rendered indispensable, or, more properly, desperate. But this great piece of supererogatory devotion had never yet been raised into an absolute duty of their station, nor had even private persons been ever required to take up the cross by compulsion. Honorius III., however, exacted a vow from Frederick, before he conferred upon him the imperial crown, that he would undertake a crusade for the deliverance of Jerusalem. Frederick submitted to this engagement, which perhaps he never designed to keep, and certainly endeavoured afterward to evade. Though he became by marriage nominal king of Jerusalem,* his excellent understanding was not captivated with so barren a prospect, and at length his delays in the performance of his vow provoked Gregory IX. to issue against him a sentence of excommunication. Such a thunderbolt was not to be lightly regarded; and Frederick sailed the next year for Palestine. But having disdained to solicit absolution for what he considered as no crime, the court of Rome was excited to still fiercer indignation against this profanation of a crusade by an excommunicated sovereign. Upon his arrival in Palestine, he received intelligence that the papal troops had broken into the kingdom of Naples. No one could rationally have blamed Frederick if he had quitted the Holy Land as he found it; but he made a treaty with the Saracens, which, though by no means so disadvantageous as under all the circumstances might have been expected, served as a pretext for new calumnies against him in Europe. The charge of irreligion, eagerly and successfully propagated, he repelled by persecuting edicts against heresy, that do no great honour to his memory, and availed him little at the time. Over his Neapolitan dominions he exercised a rigorous government, rendered perhaps necessary by the levity and insubordination characteristic of the inhabitants, but which tended, through the artful representations of Honorius and Gregory, to alarm and alienate the Italian republics.

His wars with the Lombards

A new generation had risen up in Lombardy since the peace of Constance, and the prerogatives reserved by that treaty to the em-

* The rancour of bigoted Catholics against Frederick has hardly subsided at the present day. A very moderate commendation of him in Tiraboschi, vol. iv., t. 7, was not suffered to pass uncontradicted by the Roman editor. And though Muratori shows quite enough prejudice against that emperor's character, a fierce Roman bigot, whose animadversions are printed in the 17th volume of his annals (8vo edition), flies into paroxysms of fury at every syllable that looks like moderation. It is well known that, although the public policy of Rome has long displayed the pacific temper of weakness, the thermometer of ecclesiastical sentiment in that city stands very nearly as high as in the thirteenth century. Giannone, who suffered for his boldness, has drawn Frederick II. very favourably, perhaps too favourably, in the 16th and 17th books of the Istoria Civile di Napoli.

* The second wife of Frederick was Iolante, or Violante, daughter of John, count of Brienne, by Maria, eldest daughter and heiress of Isabella, wife of Conrad, marquis of Montferrat. This Isabelle was the youngest daughter of Almaric or Amaury, king of Jerusalem, and by the deaths of her brother Baldwin IV., of her eldest sister Sibilla, wife of Guy de Lusignan, and that sister's child Baldwin V., succeeded to a claim upon Jerusalem, which, since the victories of Saladin, was not very profitable. It is said that the kings of Naples deduce their title to that sounding inheritance from this marriage of Frederick (Giannone, l. xvi., c. 2), but the extinction of Frederick's posterity must have, strictly speaking, put an end to any right derived from him; and Giannone himself indicates a better title by the cession of Maria, a princess of Antioch, and legitimate heiress of Jerusalem, to Charles of Anjou, in 1272. How far indeed this may have been regularly transmitted to the present King of Naples I do not know, and am sure that it is not worth while to inquire

sire were so seldom called into action, that few cities were disposed to recollect their existence. They denominated themselves Guelfs or Ghibelins, according to habit, and out of their mutual opposition, but without much reference to the empire. Those however of the former party, and especially Milan, retained their antipathy to the house of Swabia. Though Frederick II. was entitled, as far as established usage can create a right, to the sovereignty of Italy, the Milanese would never acknowledge him, nor permit his coronation at Monza, according to ancient ceremony, with the iron crown of the Lombard kings. The pope fomented, to the utmost of his power, this disaffected spirit, and encouraged the Lombard cities to renew their former league. This, although conformable to a provision in the treaty of Constance, was manifestly hostile to Frederick, and may be considered as the commencement of a second contest between the republican cities of Lombardy and the empire. But there was a striking difference between this and the former confederacy against Frederick Barbarossa. In the league of 1167, almost every city, forgetting all smaller animosities in the great cause of defending the national privileges, contributed its share of exertion to sustain that perilous conflict; and this transient unanimity in the people so distracted by internal faction as the Lombards, is the surest witness to the justice of their undertaking. Sixty years afterward, their war against the second Frederick had less of provocation and less of public spirit. It was in fact a party struggle of Guelf and Ghibelin cities, to which the names of the church and the empire gave more of dignity and consistence.

Arrangement of Lombard cities.

The republics of Italy in the thirteenth century were so numerous and independent, and their revolutions so frequent, that it is a difficult matter to avoid confusion in following their history. It will give more arrangement to our ideas, and at the same time illustrate the changes that took place in these little states, if we consider them as divided into four clusters or constellations, not indeed unconnected one with another, yet each having its own centre of motion, and its own boundaries. The first of these we may suppose formed of the cities in central Lombardy, between the Sessia and the Adige, the Alps and the Ligurian mountains; it comprehends Milan, Cremona, Pavia, Brescia, Bergamo, Parma, Piacenza, Mantua, Lodi, Alessandria, and several others less distinguished. These were the original seats of Italian liberty, the great movers in the wars of the elder Frederick. Milan was at the head of this cluster of cities, and her influence gave an ascendency to the Guelf party; she had, since the treaty of Constance, rendered Lodi and Pavia almost her subjects, and was in strict union with Brescia and Piacenza. Parma, however, and Cremona, were unshaken defenders of the empire. In the second class we may place the cities of the March of Verona, between the Adige and the frontiers of Germany. Of these there were but four worth mentioning: Verona, Vicenza, Padua, and Treviso. The citizens of all the four were inclined to the Guelf interests; but a powerful body of rural nobility, who had never been compelled, like those upon the upper Po, to quit their fortresses in the hilly country, or reside within the walls, attached themselves to the opposite denomination.* Some of them obtained very great authority in the civil feuds of these four republics; and especially two brothers, Eccelin and Alberic da Romano, of a rich and distinguished family, known for its devotion to the empire. By extraordinary vigour and decision of character, by dissimulation and breach of oaths, by the intimidating effects of almost unparalleled cruelty, Eccelin da Romano became after some years the absolute master of three cities, Padua, Verona, and Vicenza; and the Guelf party, in consequence, was entirely subverted beyond the Adige during the continuance of his tyranny.† Another cluster was composed of the cities in Romagna; Bologna, Imola, Faenza, Ferrara, and several others. Of these Bologna was far the most powerful, and, as no city was more steadily for the interests of the church, the Guelfs usually predominated in this class; to which also the influence of the house of Este not a little contributed. Modena, though not geographically within the limits of this division, may be classed along with it, from her constant wars with Bologna

* Sismondi, t. ii., p. 222.

† The cruelties of Eccelin excited universal horror, in an age when inhumanity towards enemies was as common as fear and revenge could make it. It was a usual trick of beggars, all over Italy, to pretend that they had been deprived of their eyes or limbs by the Veronese tyrant. There is hardly an instance in European history of so sanguinary a government subsisting for more than twenty years. The crimes of Eccelin are remarkably well authenticated by the testimony of several contemporary writers, who enter into great details. Most of these are found in the seventh volume of Scriptores Rerum Italicarum. Sismondi, t. iii., p. 83 111, 203, is more full than any of the moderns

A fourth class will comprehend the whole of Tuscany, separated almost entirely from the politics of Lombardy and Romagna. Florence headed the Guelf cities in this province, Pisa the Ghibelin. The Tuscan union was formed, as has been said above, by Innocent III., and was strongly inclined to the popes; but gradually the Ghibelin party acquired its share of influence; and the cities of Siena, Arezzo, and Lucca, shifted their policy, according to external circumstances or the fluctuations of their internal factions. The petty cities in the region of Spoleto and Ancona hardly perhaps deserve the name of republics; and Genoa does not readily fall into any of our four classes, unless her wars with Pisa may be thought to connect her with Tuscany.*

After several years of transient hostility and precarious truce, the Guelf cities of Lombardy engaged in a regular and protracted war with Frederick II., or, more properly, with their Ghibelin adversaries. Few events of this contest deserve particular notice. Neither party ever obtained such decisive advantages as had alternately belonged to Frederick Barbarossa and the Lombard confederacy, during the war of the preceding century. A defeat of the Milanese by the emperor, at Corte Nuova, in 1237, was balanced by his unsuccessful siege of Brescia the next year. The Pisans assisted Frederick to gain a great naval victory over the Genoese fleet in 1241; but he was obliged to rise from the blockade of Parma, which had left the standard of Ghibelinism in 1248. Ultimately, however, the strength of the house of Swabia was exhausted by so tedious a struggle; the Ghibelins of Italy had their vicissitudes of success; but their country, and even themselves, lost more and more of the ancient connexion with Germany.

In this resistance to Frederick II., the Lombards were much indebted to the constant support of Gregory IX. and his successor, Innocent IV.; and the Guelf, or the church party, were used as synonymous terms. These pontiffs bore an unquenchable hatred to the house of Swabia. No concessions mitigated their animosity; no reconciliation was sincere Whatever faults may be imputed to Frederick, it is impossible for any one, not blindly devoted to the court of Rome, to deny, that he was iniquitously proscribed by her unprincipled ambition. His real crime was the inheritance of his ancestors, and the name of the house of Swabia. In 1239, he was excommunicated by Gregory IX. To this he was tolerably accustomed by former experience; but the sentence was attended by an absolution of his subjects from their allegiance, and a formal deposition. These sentences were not very effective upon men of vigorous minds, or upon those whose passions were engaged in their cause; but they influenced both those who feared the threatenings of the clergy, and those who wavered already as to their line of political conduct. In the fluctuating state of Lombardy, the excommunication of Frederick undermined his interests even in cities, like Parma, that had been friendly, and seemed to identify the cause of his enemies with that of religion; a prejudice, artfully fomented by means of calumnies propagated against himself, and which the conduct of such leading Ghibelins as Eccelin, who lived in an open defiance of God and man, did not contribute to lessen. In 1240, Gregory proceeded to publish a crusade against Frederick, as if he had been an open enemy to religion; which he revenged by putting to death all the prisoners he made who wore the cross. There was one thing wanting to make the expulsion of the emperor from the Christian commonwealth more complete. Gregory IX. accordingly projected, and Innocent IV. carried into effect, the convocation of a general council. Council of Lyons. This was held at Lyons [A. D. 1245], an imperial city, but over which Frederick could no longer retain his supremacy. In this assembly, where one hundred and forty prelates appeared, the question whether Frederick ought to be deposed was solemnly discussed; he submitted to defend himself by his advocates; and the pope, in the presence, though without formally collecting the suffrages of the council, pronounced a sentence, by which Frederick's excommunication was renewed, the empire and all his kingdoms taken away, and

* I have taken no notice of Piedmont in this division. The history of that country is far less elucidated by ancient or modern writers than that of other parts of Italy. It was at this time divided between the counts of Savoy and marquises of Montferrat. But Asti, Chieri, and Turin, especially the two former, appear to have had a republican form of government. They were however not absolutely independent. The only Piedmontese city that can properly be considered as a separate state, in the thirteenth century, was Vercelli; and even there the bishop seems to have possessed a sort of temporal sovereignty. Denina, author of the Rivoluzioni d'Italia, first printed in 1769, lived to publish in his old age a history of western Italy, or Piedmont, from which I have gleaned a few facts. —Istoria dell' Italia Occidentale; Torino, 1809, 6 vols. 8vo.

his subjects absolved from their fidelity. This is the most pompous act of usurpation in all the records of the church of Rome; and the tacit approbation of a general council seemed to incorporate the pretended right of deposing kings, which might have passed as a mad vaunt of Gregory VII. and his successors, with the established faith of Christendom.

Upon the death of Frederick II., in 1250, he left to his son Conrad a contest to maintain for every part of his inheritance, as well as for the imperial crown. But the vigour of the house of Swabia was gone; Conrad was reduced to fight for the kingdom of Naples, the only succession which he could hope to secure against the troops of Innocent IV., who still pursued his family with implacable hatred, and claimed that kingdom as forfeited to its feudal superior, the Holy See. After Conrad's premature death, which happened in 1254, the throne was filled by his legitimate brother Manfred, who retained it by his bravery and address, in despite of the popes, till they were compelled to call in the assistance of a more powerful arm.

Conrad IV.

The death of Conrad brings to a termination that period in Italian history which we have described as nearly coextensive with the greatness of the house of Swabia. It is perhaps upon the whole the most honourable to Italy; that in which she displayed the most of national energy and patriotism. A Florentine or Venetian may dwell with pleasure upon later times; but a Lombard will cast back his eye across the desert of centuries, till it reposes on the field of Legnano. Great changes followed in the foreign and internal policy, in the moral and military character of Italy. But before we descend to the next period, it will be necessary to remark some material circumstances in that which has just passed under our review.

The successful resistance of the Lombard cities to such princes as both the Fredericks, must astonish a reader who brings to the story of these middle ages notions derived from modern times. But when we consider not only the ineffectual control which could be exerted over a feudal army, bound only to a short term of service, and reluctantly kept in the field at its own cost, but the peculiar distrust and disaffection with which many German princes regarded the house of Swabia, less reason will appear for surprise. Nor did the kingdom of Naples, almost always in agitation, yield any material aid to the second Frederick. The main cause, however, of that triumph which attended Lombardy was the intrinsic energy of a free government. From the eleventh century, when the cities became virtually republican, they put out those vigorous shoots which are the growth of freedom alone. Their domestic feuds, their mutual wars, the fierce assaults of their national enemies, checked not their strength, their wealth, or their population; but rather, as the limbs are nerved by labour and hardship, the republics of Italy grew in vigour and courage through the conflicts they sustained If we but remember what savage license prevailed during the ages that preceded their rise, the rapine of public robbers, or of feudal nobles little differing from robbers, the contempt of industrious arts, the inadequacy of penal laws, and the impossibility of carrying them into effect, we shall form some notion of the change which was wrought in the condition of Italy by the growth of its cities. In comparison with the blessings of industry protected, injustice controlled, emulation awakened, the disorders which ruffled their surface appear slight and momentary. I speak only of this first stage of their independence, and chiefly of the twelfth century, before those civil dissensions had reached their height, by which the glory and prosperity of Lombardy were soon to be subverted.

Causes of the success of Lombardy.

We have few authentic testimonies as to the domestic improvement of the free Italian cities, while they still deserved the name. But we may perceive by history, that their power and population, according to their extent of territory, were almost incredible. In Galvaneus Flamma, a Milanese writer, we find a curious statistical account of that city in 1288, which though of a date about thirty years after its liberties had been overthrown by usurpation, must be considered as implying a high degree of previous advancement, even if we make allowance, as probably we should, for some exaggeration. The inhabitants are reckoned at 200,000; the private houses 13,000; the nobility alone dwelt in sixty streets; 8000 gentlemen, or heavy cavalry (milites) might be mustered from the city and its district, and 240,000 men capable of arms; a force sufficient, the writer observes, to crush all the Saracens. There were in Milan six hundred notaries, two hundred physicians, eighty schoolmasters, and fifty transcribers of manuscripts In the district were one hundred and fifty

castles, with adjoining villages. Such was the state of Milan, Flamma concludes, in 1288; it is not for me to say whether it has gained or lost ground since that time.* At this period, the territory of Milan was not perhaps more extensive than the county of Surrey; it was bounded at a little distance, on almost every side, by Lodi, or Pavia, or Bergamo, or Como. It is possible, however, that Flamma may have meant to include some of these as dependances of Milan, though not strictly united with it. How flourishing must the state of cultivation have been in such a country, which not only drew no supplies from any foreign land, but exported part of her own produce! It was in the best age of their liberties, immediately after the battle of Legnano, that the Milanese commenced the great canal which conducts the waters of the Tesino to their capital, a work very extraordinary for that time. During the same period the cities gave proofs of internal prosperity that in many instances have descended to our own observation, in the solidity and magnificence of their architecture. Ecclesiastical structures were perhaps more splendid in France and England: but neither country could pretend to match the palaces and public buildings, the streets flagged with stone, the bridges of the same material, or the commodious private houses of Italy.†

The courage of these cities was wrought sometimes to a tone of insolent defiance, through the security inspired by their means of defence. From the time of the Romans to that when the use of gunpowder came to prevail, little change was made, or perhaps could be made, in that part of military science which relates to the attack and defence of fortified places. We find precisely the same engines of offence, the cumbrous towers, from which arrows were shot at the besieged, the machines from which stones were discharged, the battering-rams which assailed the walls, and the basket-work covering (the vinea or testudo of the ancients, and the gattus or chatchateil of the middle ages) under which those who pushed the battering engines were protected from the enemy. On the other hand, a city was fortified with a strong wall of brick or marble, with towers raised upon it at intervals, and a deep moat in front. Sometimes the ante-mural or barbacan was added; a rampart of less height, which impeded the approach of the hostile engines. The gates were guarded with a portcullis; an invention which, as well as the barbacan, was borrowed from the Saracens.* With such advantages for defence, a numerous and intrepid body of burghers might not unreasonably stand at bay against a powerful army; and as the consequences of capture were most terrible, while resistance was seldom hopeless, we cannot wonder at the desperate bravery of so many besieged towns. Indeed, it seldom happened that one of considerable size was taken, except by famine or treachery. Tortona did not submit to Frederick Barbarossa till the besiegers had corrupted with sulphur the only fountain that supplied the citizens; nor Crema, till her walls were overtopped by the battering engines. Ancona held out a noble example of sustaining the pressure of extreme famine. Brescia tried all the resources of a skilful engineer against the second Frederick; and swerved not from her steadiness, when that prince, imitating an atrocious precedent of his grandfather at the siege of Crema, exposed his prisoners upon his battering engines to the stones that were hurled by their fellow-citizens upon the walls.†

Of the government which existed in the republics of Italy during the twelfth and thirteenth centuries, no definite sketch can be traced. The chroniclers of those times are few and jejune; and, as is usual with contemporaries, rather intimate than describe the civil polity of their respective countries. It would indeed be a weary task, if it were even possible, to delineate the constitutions of thirty or forty little states which were in perpetual fluctuation. The

Their internal government.

* Muratori, Script. Rerum Italic., t. xi. This expression of Flamma may seem to intimate that Milan had declined in his time, which was about 1340. Yet, as she had been continually advancing in power, and had not yet experienced any tyrannical government, I cannot imagine this to have been the case; and the same Flamma, who is a great flatterer of the Visconti, and has dedicated a particular work to the praises of Azzo, asserts therein that he had greatly improved the beauty and convenience of the city; though Brescia, Cremona, and other places had declined. Azarius, too, a writer of the same age, makes a similar representation.—Script. Rer. Ital., t. xvi., p. 314 and 317. Of Luchino Visconti he says: Statum Mediolani reintegravit in tantum, quod non civitas, sed provincia videbatur.

† Sismondi, t. iv., p. 176. Tiraboschi, t. iv., p. 426. See also the observations of Denina on the population and agriculture of Italy, l. xiv., c. 9, 10, chiefly indeed applicable to a period rather later than that of her free republics.

* Muratori, Antiquit. Ital., Dissert. 26.

† See these sieges in the second and third volumes of Sismondi. That of Ancona, t ii., p. 145 206, is told with remarkable elegance and several interesting circumstances

magistrates elected in almost all of them, when they first began to shake off the jurisdiction of their count or bishop, were styled consuls; a word very expressive to an Italian ear, since, in the darkest ages, tradition must have preserved some acquaintance with the republican government of Rome.* The consuls were always annual; and their office comprehended the command of the national militia in war, as well as the administration of justice, and preservation of public order; but their number was various; two, four, six, or even twelve. In their legislative and deliberative councils, the Lombards still copied the Roman constitution, or perhaps fell naturally into the form most calculated to unite sound discretion with the exercise of popular sovereignty. A council of trust and secrecy (della credenza) was composed of a small number of persons, who took the management of public affairs, and may be called the ministers of the state. But the decision upon matters of general importance, treaties of alliance or declarations of war, the choice of consuls or ambassadors, belonged to the general council. This appears not to have been uniformly constituted in every city; and, according to its composition, the government was more or less democratical. An ultimate sovereignty, however, was reserved to the mass of the people; and a parliament or general assembly was held to deliberate on any change in the form of constitution †

About the end of the twelfth century, a new and singular species of magistracy was introduced into the Lombard cities. During the tyranny of Frederick I. he had appointed officers of his own, called podestàs, instead of the elective consuls. It is remarkable that this memorial of despotic power should not have excited insuperable alarm and disgust in the free republics. But, on the contrary, they almost universally, after the peace of Constance, revived an office which had been abrogated when they first rose in rebellion against Frederick. From experience, as we must presume, of the partiality which their domestic factions carried into the administration of justice, it became a general practice to elect, by the name of podestà, a citizen of some neighbouring state, as their general heir criminal judge, and preserver of the peace. The last duty was frequently arduous and required a vigorous as well as an upright magistrate Offences against the laws and security of the commonwealth were during the middle ages as often, perhaps more often, committed by the rich and powerful, than by the inferior class of society. Rude and licentious manners, family feuds and private revenge, or the mere insolence of strength, rendered the execution of criminal justice, practically and in every day's experience, what it is now in theory, a necessary protection to the poor against oppression. The sentence of a magistrate against a powerful offender was not pronounced without danger of tumult; it was seldom executed without force. A convicted criminal was not, as at present, the stricken deer of society, whose disgrace his kindred shrink from participating, and whose memory they strive to forget. Imputing his sentence to iniquity, or glorying in an act which the laws of his fellow-citizens, but not their sentiments, condemned, he stood upon his defence amid a circle of friends. The law was to be enforced not against an individual, but a family; not against a family, but a faction; not perhaps against a local faction, but the whole Guelf or Ghibelin name which might become interested in the quarrel. The podestà was to arm the republic against the refractory citizen; his house was to be besieged and razed to the ground, his defenders to be quelled by violence: and thus the people, become familiar with outrage and homicide under the command of their magistrates, were more disposed to repeat such scenes at the instigation of their passions *

The podestà was sometimes chosen in a general assembly, sometimes by a select number of citizens. His office was annual, though prolonged in peculiar emergencies. He was invariably a man of noble family, even in those cities which excluded their own nobility from any share in the government. He received a fixed salary, and was compelled to remain in the city, after the expiration of his office, for the purpose of answering such charges as might be adduced against his conduct. He could neither marry a native of the city, nor have any relation resident within the district, nor even, so great was their jealousy, eat or drink in

* Landulf the younger, whose history of Milan extends from 1094 to 1133, calls himself publicorum officiorum particeps et *consulum* epistolarum dictator.—Script Rer. Ital., t. v., p. 486. This is, I believe, the earliest mention of those magistrates. —Muratori, Annali d'Italia, A. D. 1107.

† Muratori, Dissert. 46 and 52. Sismondi, t. i., p. 385

* Sismondi, t. iii., p. 258, from whom the substance of these observations is borrowed. They may be copiously illustrated by Villani's history of Florence, and Stella's annals of Genoa

the house of any citizen. The authority of these foreign magistrates was not by any means alike in all cities. In some he seems to have superseded the consuls, and commanded the armies in war. In others, as Milan and Florence, his authority was merely judicial. We find, in some of the old annals, the years headed by the names of the podestàs, as by those of the consuls in the history of Rome.*

The effects of the evil spirit of discord, that had so fatally breathed upon the republics of Lombardy, were by no means confined to national interests, or to the grand distinction of Guelf and Ghibelin. Dissensions glowed in the heart of every city, and as the danger of foreign war became distant, these grew more fierce and unappeasable. The feudal system had been established upon the principle of territorial aristocracy; it maintained the authority, it encouraged the pride of rank. Hence, when the rural nobility were compelled to take up their residence in cities, they preserved the ascendency of birth and riches. From the natural respect which is shown to these advantages, all offices of trust and command were shared among them; it is not material whether this were by positive right or continual usage. A limited aristocracy of this description, where the inferior citizens possess the right of selecting their magistrates by free suffrage from a numerous body of nobles, is not among the worst forms of government, and affords no contemptible security against oppression and anarchy. This regimen appears to have prevailed in most of the Lombard cities during the eleventh and twelfth centuries; though, in so great a deficiency of authentic materials, it would be too peremptory to assert this as an unequivocal truth. There is one very early instance, in the year 1041, of a civil war at Milan between the capitanei, or vassals of the empire, and the plebeian burgesses, which was appeased by the mediation of Henry III. This is ascribed to the ill treatment which the latter experienced; as was usual indeed in all parts of Europe, but which was endured with inevitable submission everywhere else. In this civil war, which lasted three years, the nobility were obliged to leave Milan, and carry on the contest in the adjacent plains;† and one of their class, by name Lanzon, whether moved by ambition or by virtuous indignation against tyranny, put himself at the head of the people.

And dissensions.

From this time we scarcely find any mention of dissensions among the two orders, till after the peace of Constance, a proof, however defective the contemporary annals may be, that such disturbances had neither been frequent nor serious. A schism between the nobles and people is noticed to have occurred at Faenza in 1185. A serious civil war of some duration broke out between them at Brescia in 1200. From this time mutual jealousies interrupted the domestic tranquillity of other cities, but it is about 1220 that they appear to have taken a decided aspect of civil war; within a few years of that epoch, the question of aristocratical or popular command was tried by arms in Milan, Piacenza, Modena, Cremona, and Bologna.*

It would be vain to enter upon the merits of these feuds, which the meager historians of the time are seldom much disposed to elucidate, and which they saw with their own prejudices. A writer of the present age would show little philosophy, if he were to heat his passions by the reflection, as it were, of those forgotten animosities, and aggravate, like a partial contemporary, the failings of one or another faction. We have no need of positive testimony to acquaint us with the general tenour of their history. We know that a nobility is always insolent, that a populace is always intemperate, and may safely presume that the former began as the latter ended, by injustice and abuse of power. At one time the aristocracy, not content with seeing the annual magistrates selected from their body, would endeavour by usurpation to exclude the bulk of the citizens from suffrage. At another, the merchants, grown proud by riches, and confident of their strength, would aim at obtaining the honours of the state, which had been reserved to the nobility. This is the inevitable consequence of commercial wealth, and indeed of freedom and social order, which are the parents of wealth. There is in the progress of civilization a term at which exclusive privileges must be relaxed, or the possessors must perish along with them. In one or two cities a temporary compromise was made through the intervention of the pope, whereby offices of public trust, from the highest to the lowest, were divided, in equal proportions or otherwise, between the nobles and the people. This also is no bad ex

* Muratori, Dissert. 46.

† Landulfus, Hist. Mediolan. in Script. Rerum Ital., t. iv., p. 86. Muratori, Dissert. 52. Annali d'Italia, A. D 1041 St Marc. t. v. p. 94

* Sismondi, t. ii., p. 444. Muratori, Annali d'Italia, A. D 1185 &c.

pedient, and proved singularly efficacious in appeasing the dissensions of Rome.

There is, however, a natural preponderance in the popular scale, which, in a fair trial, invariably gains on that of the less numerous class. The artisans, who composed the bulk of the population, were arranged in companies according to their occupations. Sometimes, as at Milan, they formed separate associations, with rules for their internal government.* The clubs, called at Milan la Motta and a Credenza, obtained a degree of weight not at all surprising to those who consider the spirit of mutual attachment which belongs to such fraternities; and we shall see a more striking instance of this hereafter in the republic of Florence. To so formidable and organized a democracy, the nobles opposed their numerous families, the generous spirit that belongs to high birth, the influence of wealth and established name. The members of each distinguished family appear to have lived in the same street; their houses were fortified with square massive towers of commanding height, and wore the semblance of castles within the walls of a city. Brancaleon, the famous senator of Rome, destroyed one hundred and forty of these domestic intrenchments, which were constantly serving the purpose of civil broils and outrage. Expelled, as frequently happened, from the city, it was in the power of the nobles to avail themselves of their superiority in the use of cavalry, and to lay waste the district, till weariness of an unprofitable contention reduced the citizens to terms of compromise. But, when all these resources were ineffectual, they were tempted or forced to sacrifice the public liberty to their own welfare, and lent their aid to a foreign master or a domestic usurper.

In all these scenes of turbulence, whether the contest was between the nobles and people, or the Guelf and Ghibelin factions, no mercy was shown by the conquerors. The vanquished lost their homes and fortunes, and, retiring to other cities of their own party, waited for the opportunity of revenge. In a popular tumult the houses of the beaten side were frequently levelled to the ground; not perhaps from a sort of senseless fury which Muratori inveighs against, but on account of the injury which these fortified houses inflicted upon the lower citizens. The most deadly hatred is that which men, exasperated by proscription and forfeiture, bear to their country; nor have we need to ask any other cause for the calamities of Italy, than the bitterness with which an unsuccessful faction was thus pursued into banishment. When the Ghibelins were returning to Florence, after a defeat given to the prevailing party in 1260, it was proposed among them to demolish the city itself which had cast them out; and, but for the persuasion of one man, Farinata degl' Uberti, their revenge would have thus extinguished all patriotism.* It is to this that we must ascribe their proneness to call in assistance from every side, and to invite any servitude for the sake of retaliating upon their adversaries. The simple love of public liberty is in general, I fear, too abstract a passion to glow warmly in the human breast; and, though often invigorated as well as determined by personal animosities and predilections, is as frequently extinguished by the same cause.

Independently of the two leading differences which embattled the citizens of an Italian state, their form of government and their relation to the empire, there were others more contemptible, though not less mischievous. In every city the quarrels of private families became the foundation of general schism, sedition, and proscription. Sometimes these blended themselves with the grand distinctions of Guelf and Ghibelin; sometimes they were more nakedly conspicuous. This may be illustrated by one or two prominent examples. Imilda de Lambertazzi, a noble young lady at Bologna, was surprised by her brothers in a secret interview with Boniface Gieremei, whose family had long been separated by the most inveterate enmity from her own. She had just time to escape: while the Lambertazzi despatched her lover with their poisoned daggers. On her return she found his body still warm, and a faint hope suggested the remedy of sucking the venom from his wounds. But it only communicated itself to her own veins; and they were found by her attendants stretched lifeless by each other's side. So cruel an outrage wrought the Gieremei to madness; they formed alliances with some neighbouring republics; the Lambertazzi took the same measures; and after a fight in the streets of Bologna of forty days' duration, the latter were driven out of the city, with all the Ghibe-

* Muratori, Dissert 52 Sismondi, t. iii., p. 262.

* G. Villani, l. vi., c. 82. Sismondi. I cannot forgive Dante for placing this patriot trà l'anime più nere, in one of the worst regions of his Inferno. The conversation of the poet with Farinata, cant 10, is very fine, and illustrative of Florentine history.

lins, their political associates. Twelve thousand citizens were condemned to banishment; their houses razed, and their estates confiscated.* Florence was at rest till, in 1215, the assassination of an individual produced a mortal feud between the families Boundelmonti and Uberti, in which all the city took a part. An outrage committed at Pistoja, in 1300, split the inhabitants into the parties of Bianchi and Neri; and these, spreading to Florence, created one of the most virulent divisions which annoyed that republic. In one of the changes which attended this little ramification of faction, Florence expelled a young citizen who had borne offices of magistracy, and espoused the cause of the Bianchi. Dante Alighieri retired to the courts of some Ghibelin princes, where his sublime and inventive mind, in the gloom of exile, completed that original combination of vast and extravagant conceptions with keen political satire, which has given immortality to his name, and even lustre to the petty contests of his time.†

In the earlier stages of the Lombard republics, their differences, as well mutual as domestic, had been frequently appeased by the mediation of the emperors: and the loss of this salutary influence may be considered as no slight evil attached to that absolute emancipation which Italy attained in the thirteenth century. The popes sometimes endeavoured to interpose an authority, which, though not quite so direct, was held in greater veneration; and, if their own tempers had been always pure from the selfish and vindictive passions of those whom they influenced, might have produced more general and permanent good. But they considered the Ghibelins as their own peculiar enemies, and the triumph of the opposite faction as the church's best security. Gregory X. and Nicholas III., whether from benevolent motives, or because their jealousy of Charles of Anjou, while at the head of the Guelfs, suggested the revival of a Ghibelin party as a counterpoise to his power, distinguished their pontificate by enforcing measures of reconciliation in all Italian cities; but their successors returned to the ancient policy and prejudices of Rome.

The singular history of an individual far less elevated in station than popes or emperors, Fra Giovanni di Vicenza, belongs to these times and to this subject. This Dominican friar began his career at Bologna, in 1233, preaching the cessation of war and forgiveness of injuries. He repaired from thence to Padua, to Verona, and the neighbouring cities. At his command men laid down their instruments of war, and embraced their enemies. With that susceptibility of transient impulse natural to popular governments, several republics implored him to reform their laws and to settle their differences. A general meeting was summoned in the plain of Paquara, upon the banks of the Adige The Lombards poured themselves forth from Romagna and the cities of the March; Guelfs and Ghibelins, nobles and burghers, free citizens and tenantry of feudal lords, marshalled around their carroccios, caught from the lips of the preacher the illusive promise of universal peace. They submitted to agreements dictated by Fra Giovanni, which contain little else than a mutual amnesty; whether it were that their quarrels had been really without object, or that he had dexterously avoided to determine the real point of contention. But power and reputation suddenly acquired are transitory. Not satisfied with being the legislator and arbiter of Italian cities, he aimed at becoming their master; and abused the enthusiasm of Vicenza and Verona, to obtain a grant of absolute sovereignty. Changed from an apostle to an usurper, the fate of Fra Giovanni might be predicted; and he speedily gave place to those who, though they made a worse use of their power, had, in the eyes of mankind, more natural pretensions to possess it.* Giovanni di Vicenza.

PART II.

State of Italy after the Extinction of the House of Swabia.—Conquest of Naples by Charles of Anjou.—The Lombard Republics become severally subject to Princes or Usurpers.—The Visconti of Milan—their Aggrandizement.—Decline of the Imperial Authority over Italy.—Internal State of Rome.—Rienzi.—Florence—her forms of Government historically traced to the end of the fourteenth Century.—Conquest of Pisa.—Pisa—its Commerce, Naval Wars with Genoa and Decay.—Genoa—her Contentions with Ven

* Sismondi, t. iii., p. 442. This story may suggest that of Romeo and Juliet, itself founded upon an Italian novel, and not an unnatural picture of manners.

† Dino Compagni, in Scr. Rer. Ital., t. ix. Villani, in Fiorent. l. viii. Dante, passim

* Tiraboschi, Storia della Letteratura, .. iv., p. 214 (a very well-written account). Sismondi, ii., p. 484

ice.—Wars of Chioggia.—Government of Genoa.—Venice—her Origin and Prosperity.—Venetian Government.—its Vices.—Territorial Conquests of Venice.—Military System of Italy.—Companies of Adventure.—1. foreign; Guarnieri Hawkwood—and 2 native; Braccio, Sforza. Improvements in Military Service.—Arms, offensive and defensive.—Invention of Gunpowder.—Naples.—First Line of Anjou.—Joanna I.—Ladislaus.—Joanna II.—Francis Sforza becomes Duke of Milan.—Alfonso, king of Naples.—State of Italy during the fifteenth Century.—Florence.—Rise of the Medici, and Ruin of their Adversaries.—Pretensions of Charles VIII. to Naples.

From the death of Frederick II., in 1250, to the invasion of Charles VIII., in 1494, a long and undistinguished period occurs, which it is impossible to break into any natural divisions. It is an age in many respects highly brilliant; the age of poetry and letters, of art, and of continual improvement. Italy displayed an intellectual superiority in this period over the Transalpine nations, which certainly had not appeared since the destruction of the Roman empire. But her political history presents a labyrinth of petty facts, so obscure and of so little influence as not to arrest the attention; so intricate and incapable of classification as to leave only confusion in the memory. The general events that are worthy of notice, and give a character to this long period, are the establishment of small tyrannies upon the ruins of republican government in most of the cities, the gradual rise of three considerable states, Milan, Florence, and Venice, the naval and commercial rivalry between the last city and Genoa, the final acquisition by the popes of their present territorial sovereignty, and the revolutions in the kingdom of Naples under the lines of Anjou and Aragon.

After the death of Frederick II., the distinctions of Guelf and Ghibelin became destitute of all rational meaning. The most odious crimes were constantly perpetrated, and the utmost miseries endured, for an echo and a shade, that mocked the deluded enthusiasts of faction. None of the Guelfs denied the nominal, but indefinite sovereignty of the empire; and beyond a name the Ghibelins themselves would have been little disposed to carry it. But the virulent hatreds attached to these words grew continually more implacable, till ages of ignominy and tyrannical government had extinguished every energetic passion in the bosoms of a degraded people.

In the fall of the house of Swabia, Rome appeared to have consummated her triumph; and although the Ghibelin party was for a little time able to maintain itself, and even to gain ground in the north of Italy, yet two events that occurred not long afterward restored the ascendency of their adversaries. The first of these was the fall of Eccelin da Romano [A. D. 1259], whose rapid successes in Lombardy appeared to threaten the establishment of a tremendous despotism, and induced a temporary union of Guelf and Ghibelin states, by which he was overthrown. The next, and far more important, was the change of dynasty in Naples. This kingdom had been occupied, after the death of Conrad, by his illegitimate brother, Manfred, in the behalf, as he at first pretended, of young Conradin the heir, but in fact as his own acquisition. [A. D. 1254.] He was a prince of an active and firm mind, well fitted for his difficult post, to whom the Ghibelins looked up as their head, and as the representative of his father. It was a natural object with the popes, independently of their ill-will towards a son of Frederick II., to see a sovereign on whom they could better rely placed upon so neighbouring a throne. Charles, count of Anjou, brother of St. Louis, was tempted by them to lead a crusade (for as such all wars for the interest of Rome were now considered) against the Neapolitan usurper. [A. D. 1266.] The chance of a battle decided the fate of Naples, and had a striking influence upon the history of Europe for several centuries. Manfred was killed in the field; but there remained the legitimate heir of the Fredericks, a boy of seventeen years old, Conradin, son of Conrad, who rashly, as we say at least after the event, attempted to regain his inheritance. He fell into the hands of Charles; and the voice of those rude ages, as well as of a more enlightened posterity, has united in branding with everlasting infamy the name of that prince, who did not hesitate to purchase the security of his own title by the public execution of an honourable competitor, or rather a rightful claimant of the throne he had usurped. [A. D. 1268.] With Conradin the house of Swabia was extinguished; but Constance, the daughter of Manfred, had transported *his* right to Sicily and Naples into the house of Aragon, by her marriage with Peter III.

Affairs of Naples.

Charles of Anjou.

This success of a monarch, selected by the Roman pontiffs as their particular champion, turned the tide of faction over all Italy. He expelled the Ghibelins from Florence of which they had a few years before

Decline of the Ghibelin party

obtained a complete command by means of their memorable victory upon the river Arbia. After the fall of Conradin, that party was everywhere discouraged. Germany held out small hopes of support, even when the imperial throne, which had long been vacant, should be filled by one of her princes. The populace were, in almost every city, attached to the church and to the name of Guelf; the kings of Naples employed their arms, and the popes their excommunications, so that for the remainder of the thirteenth century the name of Ghibelin was a term of proscription in the majority of Lombard and Tuscan republics. Charles was constituted by the pope vicar-general in Tuscany. This was a new pretension of the Roman pontiffs, to name the lieutenants of the empire during its vacancy, which indeed could not be completely filled up without their consent. It soon, however, became evident, that he aimed at the sovereignty of Italy. Some of the popes themselves, Gregory X. and Nicholas IV., grew jealous of their own creature. At the Congress of Cremona, in 1269, it was proposed to confer upon Charles the seigniory of all the Guelf cities; but the greater part were prudent enough to choose him rather as a friend than a master.*

The Lombard cities become subject to lords.

The cities of Lombardy, however, of either denomination, were no longer influenced by that generous disdain of one man's will, which is to republican governments what chastity is to women; a conservative principle, never to be reasoned upon, or subjected to calculations of utility. By force, or stratagem, or free consent, almost all the Lombard republics had already fallen under the yoke of some leading citizen, who became the lord (signore), or, in the Grecian sense, tyrant of his country. The first instance of a voluntary delegation of sovereignty was that above mentioned of Ferrara, which placed itself under the Lord of Este. Eccelin made himself truly the tyrant of the cities beyond the Adige; and such experience ought naturally to have inspired the Italians with more universal abhorrence of despotism. But every danger appeared trivial in the eyes of exasperated factions, when compared with the ascendency of their adversaries. Weary of unceasing and useless contests in which ruin fell with an alternate but equal hand upon either party, liberty withdrew from a people who disgraced her name; and the tumultuous, the brave, the intractable Lombards, became eager to submit themselves to a master, and patient under the heaviest oppression. Or, if tyranny sometimes overstepped the limits of forbearance, and a seditious rising expelled the reigning prince, it was only to produce a change of hands, and transfer the impotent people to a different, and perhaps a worse, despotism.* In many cities, not a conspiracy was planned, not a sigh was breathed in favour of republican government, after once they had passed under the sway of a single person. The progress indeed was gradual, though sure, from limited to absolute, from temporary to hereditary power, from a just and conciliating rule, to extortion and cruelty. But, before the middle of the fourteenth century, at the latest, all those cities which had spurned at the faintest mark of submission to the emperors, lost even the recollection of self-government, and were bequeathed, like an undoubted patrimony, among the children of their new lords. Such is the progress of usurpation; and such the vengeance that Heaven reserves for those who waste in license and faction its first of social blessings, liberty.†

* Sismondi, t iii., p. 417. Several, however, including Milan, took an oath of fidelity to Charles the same year.—Ibid. In 1273, he was lord of Alessandria and Piacenza, and received tribute from Milan, Bologna, and most Lombard cities.—Muratori. It was evidently his intention to avail himself of the vacancy of the empire, and either to acquire that title himself, or at least to stand in the same relation as the emperors had done to the Italian states; which, according to the usage of the twelfth and thirteenth centuries, left them in possession of every thing that we call independence, with the reservation of a nominal allegiance.

* See an instance of the manner in which one tyrant was exchanged for another, in the fate of Passerino Bonaccorsi, lord of Mantua, in 1328. Luigi di Gonzaga surprised him, rode the city (corse la città) with a troop of horse, crying Viva il popolo, e muoja Messer Passerino e le sue gabelle! killed Passerino upon the spot, put his son to death in cold blood, e poi si fece signore della terra. Villani, l. x., c. 99, observes, like a good republican, that God had fulfilled in this the words of his Gospel (query, what Gospel?), I will slay my enemy by my enemy! abbattendo l'uno tiranno per l'altro.

† See the observations of Sismondi, t. iv., p. 212, on the conduct of the Lombard signori (I know not of any English word that characterizes them, except *tyrant* in its primitive sense), during the first period of their dominion. They were generally chosen in an assembly of the people, sometimes for a short term, prolonged in the same manner. The people was consulted upon several occasions. At Milan there was a council of 900 nobles, not permanent or representative, but selected and convened at the discretion of the government, throughout the reigns of the Visconti.—Corio, p. 519, 583. Thus, as Sismondi remarks, they respected the sovereignty of the people, while they destroyed its liberty.

The city most distinguished in both wars against the house of Swabia, for an unconquerable attachment to republican institutions, was the first to sacrifice them in a few years after the death of Frederick II. Milan had for a considerable time been agitated by civil dissensions between the nobility and inferior citizens. These parties were pretty equally balanced, and their success was consequently alternate. Each had its own podestà, as a party-leader, distinct from the legitimate magistrate of the city. At the head of the nobility was their archbishop, Fra Leon Perego; the people chose Martin della Torre, one of a noble family which had ambitiously sided with the democratic faction. In consequence of the crime of a nobleman, who had murdered one of his creditors, the two parties took up arms in 1257. A civil war of various success, and interrupted by several pacifications, which, in that unhappy temper, could not be durable, was terminated in about two years by the entire discomfiture of the aristocracy, and by the election of Martin della Torre as chief and lord (capitano e signore) of the people. Though the Milanese did not probably intend to renounce the sovereignty resident in their general assemblies, yet they soon lost the republican spirit; five in succession of the family Della Torre might be said to reign in Milan; each indeed by a formal election, but with an implied recognition of a sort of hereditary title. Twenty years afterward, the Visconti, a family of opposite interests, supplanted the Torriani at Milan; and the rivality between these great houses was not at an end till the final establishment of Matteo Visconti, in 1313; but the people were not otherwise considered than as aiding by force the one or other party, and at most deciding between the pretensions of their masters.

The Torriani and Visconti at Milan.

The vigour and concert infused into the Guelf party by the successes of Charles of Anjou, were not very durable. That prince was soon involved in a protracted and unfortunate quarrel with the kings of Aragon, to whose protection his revolted subjects in Italy had recurred. On the other hand, several men of energetic character retrieved the Ghibelin interests in Lombardy, and even in the Tuscan cities. The Visconti were acknowledged heads of that faction. A family early established as lords of Verona, the Della Scala, maintained the credit of the same denomination between the Adige and the Adriatic.

Revival of the Ghibelin party.

Castruccio Castracani, an adventurer of remarkable ability, rendered himself prince of Lucca, and drew over a formidable accession to the imperial side from the heart of the church party in Tuscany, though his death restored the ancient order of things. The inferior tyrants were partly Guelf, partly Ghibelin, according to local revolutions; but, upon the whole the latter acquired a gradual ascendency. Those indeed who cared for the independence of Italy, or for their own power, had far less to fear from the phantom of imperial prerogatives, long intermitted, and incapable of being enforced, than from the new race of foreign princes, whom the church had substituted for the house of Swabia. The Angevin kings of Naples were sovereigns of Provence, and from thence easily encroached upon Piedmont, and threatened the Milanese. Robert, the third of this line, almost openly aspired, like his grandfather, Charles I., to a real sovereignty over Italy. His offers of assistance to Guelf cities in war were always coupled with a demand of the sovereignty. Many yielded to his ambition; and even Florence twice bestowed upon him a temporary dictatorship. In 1314 he was acknowledged lord of Lucca, Florence, Pavia, Alessandria, Bergamo, and the cities of Romagna. In 1318 the Guelfs of Genoa found no other resource against the Ghibelin emigrants who were under their walls, than to resign their liberties to the King of Naples for the term of ten years, which he procured to be renewed for six more. The Avignon popes, especially John XXII., out of blind hatred to the Emperor Louis of Bavaria and the Visconti family, abetted all these measures of ambition. But they were rendered abortive by Robert's death, and the subsequent disturbances of his kingdom.

Kings of Naples aim at command of Italy.

At the latter end of the thirteenth century, there were almost as many princes in the north of Italy as there had been free cities in the preceding age. Their equality, and the frequent domestic revolutions which made their seat unsteady, kept them for a while from encroaching on each other. Gradually, however, they became less numerous; a quantity of obscure tyrants were swept away from the smaller cities; and the people, careless or hopeless of liberty, were glad to exchange the rule of despicable petty usurpers for that of more distinguished and powerful families. About the year 1350, the central parts of Lombardy had fallen under the

State of Lombardy in the middle of the

Fourteenth century. dominion of the Visconti. Four other houses occupied the second rank; that of Este at Ferrara and Modena; of Scala at Verona, which under Cane and Mastino della Scala had seemed likely to contest with the lords of Milan the supremacy over Lombardy; of Carrara at Padua, which later than any Lombard city had resigned her liberty; and of Gonzaga at Mantua, which, without ever obtaining any material extension of territory, continued, probably for that reason, to reign undisturbed till the eighteenth century. But these united were hardly a match, as they sometimes experienced, for the Visconti. That family, the object of every league formed in Italy for more than fifty years, in constant hostility to the church, and well inured to interdicts and excommunications, producing no one man of military talents, but fertile of tyrants detested for their perfidiousness and cruelty, was nevertheless enabled, with almost uninterrupted success, to add city after city to the dominion of Milan, till it absorbed all the north of Italy. Under Gian Galeazzo, whose reign began in 1385, the viper (their armorial bearing) assumed indeed a menacing attitude:* he overturned the great family of Scala, and annexed their extensive possessions to his own; no power intervened from Vercelli in Piedmont to Feltre and Belluno; while the free cities of Tuscany, Pisa, Siena, Perugia, and even Bologna, as if by a kind of witchcraft, voluntarily called in a dissembling tyrant as their master.

Power of the Visconti.

Powerful as the Visconti were in Italy, they were long in washing out the tinge of recent usurpation, which humbled them before the legitimate dynasties of Europe. At the siege of Genoa, in 1318, Robert, king of Naples, rejected with contempt the challenge of Marco Visconti to decide their quarrel in single combat.† But the pride of sovereigns, like that of private men, is easily set aside for their interest. Galeazzo Visconti purchased with 100.000 florins a daughter of France for his son, which the French historians mention as a deplorable humiliation for their crown. A few years afterward, Lionel, duke of Clarence, second son of Edward III., certainly not an inferior match, espoused Galeazzo's daughter. Both these connexions were short-lived, but the union of Valentine, daughter of Gian Galeazzo, with the Duke of Orleans, in 1389, produced far more important consequences, and served to transmit a claim to her descendants, Louis XII and Francis I., from which the long calamities of Italy at the beginning of the sixteenth century were chiefly derived. Not long after this marriage [A. D. 1395], the Visconti were tacitly admitted among the reigning princes, by the erection of Milan into a dutchy under letters patent of the Emperor Wenceslaus.*

The imperial authority over Italy was almost entirely suspended after the death of Frederick II. A long interregnum followed in Germany; and when the vacancy was supplied by Rodolph of Hapsburg [A. D. 1272], he was too prudent to dissipate his moderate resources, where the great house of Swabia had failed. About forty years afterward [A. D. 1309], the emperor Henry of Luxemburg, a prince, like Rodolph, of small hereditary possessions, but active and discreet, availed himself of the ancient respect borne to the imperial name, and the mutual jealousies of the Italians, to recover for a very short time a remarkable influence. But, though professing neutrality, and desire of union between the Guelfs and Ghibelins, he could not succeed in removing the distrust of the former; his exigences impelled him to large demands of money; and the Italians, when they counted his scanty German cavalry, perceived that obedience was altogether a matter of their own choice. Henry died, however, in time to save himself from any decisive reverse. His successors, Louis of Bavaria and Charles IV., descended from the Alps with similar motives, but after some temporary good fortune were obliged to return, not without discredit. Yet the Italians never broke that almost invisible thread which connected them with Germany; the fallacious name of Roman emperor still challenged their allegiance, though conferred by seven Teutonic electors without their concurrence. Even Florence, the most independent and high spirited of republics, was induced to make a treaty with Charles IV. in 1355 which, while it confirmed all her actua

Relations of the empire with Italy.

Henry VII.

* Allusions to heraldry are very common in the Italian writers. All the historians of the fourteenth century habitually use the viper, il biscione, as a synonyme for the power of Milan.

† Della qual cosa il Rè molto sdegno ne prese. Villani, l. ix., c. 93. It was reckoned a misalliance, as Dante tells us, in the widow of Nino di Gallura, a nobleman of Pisa, though a sort of prince in Sardinia, to marry one of the Visconti.—Purgatorio, cant. 8.

* Corio, p. 538

liberties, not a little, by that very confirmation, affected her sovereignty.* This deference to the supposed prerogatives of the empire, even while they were least formidable, was partly owing to jealousy of French or Neapolitan interference, partly to the national hatred of the popes who had seceded to Avignon, and in some degree to a misplaced respect for antiquity, to which the revival of letters had given birth. The great civilians, and the much greater poets of the fourteenth century, taught Italy to consider her emperor as a dormant sovereign, to whom her various principalities and republics were subordinate, and during whose absence alone they had legitimate authority.

Cession of Romagna to the Popes.

In one part, however, of that country, the empire had, soon after the commencement of this period, spontaneously renounced its sovereignty. From the era of Pepin's donation, confirmed and extended by many subsequent charters, the Holy See had tolerably just pretensions to the province entitled Romagna, or the exarchate of Ravenna. But the popes, whose menaces were dreaded at the extremities of Europe, were still very weak as temporal princes. Even Innocent III. had never been able to obtain possession of this part of St. Peter's patrimony. The circumstances of Rodolph's accession inspired Nicholas III. with more confidence. That emperor granted a confirmation of every thing included in the donations of Louis I., Otho, and his other predecessors; but was still reluctant or ashamed to renounce his imperial rights. Accordingly, his charter is expressed to be granted without diminution of the empire (sine demembratione imperii); and his chancellor received an oath of fidelity from the cities of Romagna. But the pope insisting firmly on his own claim, Rodolph discreetly avoided involving himself in a fatal quarrel, and, in 1278, absolutely released the imperial supremacy over all the dominions already granted to the Holy See.*

This is a leading epoch in the temporal monarchy of Rome. But she stood only in the place of the emperor; and her ultimate sovereignty was compatible with the practical independence of the free cities, or of the usurpers who had risen up among them. Bologna, Faenza, Rimini, and Ravenna, with many others less considerable, took an oath indeed to the pope, but continued to regulate both their internal concerns and foreign relations at their own discretion. The first of these cities was far pre-eminent above the rest for population and renown, and, though not without several intermissions, preserved a republican character till the end of the fourteenth century. The rest were soon enslaved by petty tyrants, more obscure than those of Lombardy. It was not easy for the pontiffs of Avignon to reinstate themselves in a dominion which they seemed to have abandoned; but they made several attempts to recover it, sometimes with spiritual arms sometimes with the more efficacious aid of mercenary troops. The annals of this part of Italy are peculiarly uninteresting.

Internal state of Rome

Rome itself was, throughout the middle ages, very little disposed to acquiesce in the government of her bishop. His rights were indefinite, and unconfirmed by positive law; the emperor was long sovereign, the people always meant to be free. Besides the common causes of insubordination and anarchy among the Italians, which applied equally to the capital city, other sentiments more peculiar to Rome preserved a continual, though not uniform, influence for many centuries. There still remained enough, in the wreck of that vast inheritance, to swell the bosoms of her citizens with a consciousness of their own dignity. They bore the venerable name, they contemplated the monuments of art and empire, and forgot, in the illusions of

* The republic of Florence was at this time in considerable peril from a coalition of the Tuscan cities against her, which rendered the protection of the emperor convenient. But it was very reluctantly that she acquiesced in even a nominal submission to his authority. The Florentine envoys, in their first address, would only use the words, Santa Corona, or Serenissimo Principe; sanza ricordarlo imperadore, o dimostrargli alcuna reverenza di suggezzione, domandando che il commune di Firenze volea, essendogli ubbidiente, le cotali e le cotali franchigie per mantenere il suo popolo nell' usata libertade.—Mat. Villani, p. 274. (Script. Rer. Ital., t. xiv.) This style made Charles angry; and the city soon atoned for it by accepting his privilege. In this, it must be owned, he assumes a decided tone of sovereignty. The gonfalonier and priors are declared to be his vicars. The deputies of the city did homage and swore obedience. Circumstances induced the principal citizens to make this submission, which they knew to be merely nominal. But the high-spirited people, not so indifferent about names, came into it very unwillingly. The treaty was seven times proposed, and as often rejected in the consiglio del popolo, before their feelings were subdued. Its publication was received with no marks of joy. The public buildings alone were illuminated: but a sad silence it dicated the wounded pride of every private citizen. -M Villani, p. 285 290 Sismondi, t. vi., p 238

* Muratori, ad ann. 1274, 1275, 1278. Sismondi, t. iii., p. 461.

national pride, that the tutelar gods of the buildings were departed for ever. About the middle of the twelfth century, these recollections were heightened by the eloquence of Arnold of Brescia, a political heretic, who preached against the temporal jurisdiction of the hierarchy. In a temporary intoxication of fancy, they were led to make a ridiculous show of self-importance towards Frederick Barbarossa, when he came to receive the imperial crown, but the German sternly chided their ostentation. and chastised their resistance.* With the popes they could deal more securely. Several of them were expelled from Rome during that age by the seditious citizens. Lucius II. died of hurts received in a tumult. The government was vested in fifty-six senators, annually chosen by the people, through the intervention of an electoral body, ten delegates from each of the thirteen districts of the city.† This constitution lasted not quite fifty years. In 1192, Rome imitated the prevailing fashion by the appointment of an annual foreign magistrate.‡ Except in name, the senator of Rome appears to have perfectly resembled the podestà of other cities. This magistrate superseded the representative senate, who had proved by no means adequate to control the most lawless aristocracy of Italy. I shall not repeat the story of Brancaleon's rigorous and inflexible justice, which a great historian has already drawn from obscurity. It illustrates not the annals of Rome alone, but the general state of Italian society, the nature of a podestà's duty, and the difficulties of its execution. The office of senator survives after more than six hundred years; a foreign magistrate still resides in the capitol; but he no longer wields the "iron flail"§ of Brancaleon, and his nomination proceeds of course from the supreme pontiff, not from the people. In the twelfth and thirteenth centuries, the senate, and the senator who succeeded them. exercised one distinguishing attribute of sovereignty that of coining gold and silver money. Some of their coins still exist, with legends in a very republican tone.* Doubtless the temporal authority of the popes varied according to their personal character. Innocent III. had much more than his predecessors for almost a century, or than some of his successors. He made the senator take an oath of fealty to him, which, though not very comprehensive, must have passed in those times as a recognition of his superiority.†

Though there was much less obedience to any legitimate power at Rome than anywhere else in Italy, even during the thirteenth century, yet after the secession of the popes to Avignon, their own city was left in a far worse condition than before. Disorders of every kind tumult and robbery, prevailed in the streets. The Roman nobility were engaged in perpetual war with each other. Not content with their own fortified palaces, they turned the sacred monuments of antiquity into strongholds, and consummated the destruction of time and conquest. At no period has the city endured such irreparable injuries; nor was the downfall of the western empire so fatal to its capital, as the contemptible feuds of the Orsini and Colonna families. Whatever there was of government, whether administered by a legate from Avignon, or by the municipal authorities, had lost all hold on these powerful barons. [A. D. 1347.] In the midst of this degradation and wretchedness, an obscure man, Nicola di Rienzi, conceived the project of restoring Rome not only to good order, but even to her ancient greatness. He had received an education beyond his birth, and nourished his mind with the study of the best writers. After many harangues to the people, which the nobility, blinded by their self-confidence, did not attempt to repress, Rienzi suddenly excited an insurrection, and obtained complete success. He was placed at the head of a new government, with the title of tribune, and with almost unlimited power. The first effects of this revolution were wonderful. All the nobles submitted, though with great reluctance; the roads were cleared of robbers; tranquillity was restored at home; some severe examples of justice intimidated offenders; and the tribune was regarded by all the people as the destined restorer of Rome and Italy

The Tribune Rienzi.

* The impertinent address of a Roman orator to Frederick, and his answer, are preserved in Otho of Frisingen, l. ii., c. 22, but so much at length that we may suspect some exaggeration. Otho is rather rhetorical. They may be read in Gibbon, c. 69.

† Sismondi, t. ii., p. 36. Besides Sismondi and Muratori, I would refer for the history of Rome during the middle ages to the last chapters of Gibbon's Decline and Fall.

‡ Sismondi, t. ii., p. 308.

§ The readers of Spenser will recollect the iron flail of Talus, the attendant of Arthegal, emblematic of the severe justice of the lord deputy of Ireland, Sir Arthur Grey, shadowed under that allegory.

* Gibbon, vol. xii., p. 289. Muratori, Antiquit Ital., Dissert. 27.

† Sismondi, p. 309.

Though the court of Avignon could not approve of such a usurpation, it temporized enough not directly to oppose it. Most of the Italian republics, and some of the princes, sent ambassadors, and seemed to recognise pretensions which were tolerably ostentatious. The King of Hungary and Queen of Naples submitted their quarrel to the arbitration of Rienzi, who did not, however, undertake to decide upon it. But this sudden exaltation intoxicated his understanding, and exhibited failings entirely incompatible with his elevated condition. If Rienzi had lived in our own age, his talents, which were really great, would have found their proper orbit. For his character was one not unusual among literary politicians; a combination of knowledge, eloquence, and enthusiasm for ideal excellence, with vanity, inexperience of mankind, unsteadiness, and physical timidity. As these latter qualities became conspicuous, they eclipsed his virtues, and caused his benefits to be forgotten; he was compelled to abdicate his government, and retire into exile. After several years, some of which he passed in the prisons of Avignon, Rienzi was brought back to Rome, with the title of senator, and under the command of the legate. It was supposed that the Romans, who had returned to their habits of insubordination, would gladly submit to their favourite tribune. And this proved the case for a few months; but after that time they ceased altogether to respect a man, who so little respected himself in accepting a station where he could no longer be free, and Rienzi was killed in a sedition.*

Subsequent affairs of Rome.

Once more, not long after the death of Rienzi, the freedom of Rome seems to have revived in republican institutions, though with names less calculated to inspire peculiar recollections. Magistrates called bannerets, chosen from the thirteen districts of the city, with a militia of three thousand citizens at their command, were placed at the head of this commonwealth. The great object of this new organization was to intimidate the Roman nobility, whose outrages, in the total absence of government, had grown intolerable. Several of them were hanged the first year by order of the bannerets. The citizens however, had no serious intention of throwing off their subjection to the popes. They provided for their own security, on account of the lamentable secession and neglect of those who claimed allegiance while they denied protection. But they were ready to acknowledge and welcome back their bishop as their sovereign. Even without this, they surrendered their republican constitution in 1362, it does not appear for what reason, and permitted the legate of Innocent VI to assume the government.* We find, however, the institution of bannerets revived, and in full authority, some years afterward. But the internal history of Rome appears to be obscure, and I have not had opportunities of examining it minutely. Some degree of political freedom the city probably enjoyed during the schism of the church; but it is not easy to discriminate the assertion of legitimate privileges from the licentious tumults of the barons or populace. In 1435, the Romans formally took away the government from Eugenius IV., and elected seven signiors or chief magistrates, like the priors of Florence.† But this revolution was not of long continuance. On the death of Eugenius, the citizens deliberated upon proposing a constitutional charter to the future pope. Stephen Porcaro, a man of good family, and inflamed by a strong spirit of liberty, was one of their principal instigators. But the people did not sufficiently partake of that spirit. No measures were taken upon this occasion; and Porcaro, whose ardent imagination disguised the hopelessness of his enterprise, tampering in a fresh conspiracy, was put to death under the pontificate of Nicholas V.‡

The province of Tuscany continued

* Sismondi, t. v., c. 37; t. vi., p. 201. Gibbon, c. 70. De Sade, Vie de Pétrarque, t. ii., passim. Tiraboschi, t. vi., p. 339. It is difficult to resist the admiration which all the romantic circumstances of Rienzi's history tend to excite, and to which Petrarch so blindly gave way. That great man's characteristic excellence was not good common sense. He had imbibed two notions, of which it is hard to say which was the more absurd; that Rome had a legitimate right to all her ancient authority over the rest of the world; and that she was likely to recover this authority in consequence of the revolution produced by Rienzi. Giovanni Villani, living at Florence, and a stanch republican, formed a very different estimate, which weighs more than the enthusiastic panegyrics of Petrarch. La detta impresa del tribuno era una opera fantastica, e di poco durare, l. xii., c. 90. An illustrious female writer has drawn with a single stroke the character of Rienzi, Crescentius, and Arnold of Brescia, the fond restorers of Roman liberty, *qui ont pris les souvenirs pour les espérances* — Corinne, t. i., p. 159. Could Tacitus have excelled this?

* Matt. Villani, p. 576, 604, 709. Sismondi, t. v., p. 92. He seems to have overlooked the former period of government by bannerets, and refers their institution to 1375.

† Script. Rer. Italic., t. iii., pars 2, p. 1128.

‡ Id., p. 1131, 1134. Sismondi, t. v., p. 18.

longer than Lombardy under the government of an imperial lieutenant. It was not till about the middle of the twelfth century that the cities of Florence, Lucca, Pisa, Sienna, Arezzo, Pistoia, and several less considerable, which might perhaps have already their own elected magistrates, became independent republics. Their history is, with the exception of Pisa, very scanty till the death of Frederick II. The earliest fact of any importance recorded of Florence occurs in 1184, when it is said that Frederick Barbarossa took from her the dominion over the district or county, and restored it to the rural nobility, on account of her attachment to the church.* This I chiefly mention to illustrate the system pursued by the cities, of bringing the territorial proprietors in their neighbourhood under subjection. During the reign of Frederick II. Florence became, as far as she was able, an ally of the popes. There was indeed a strong Ghibelin party, comprehending many of the greatest families, which occasionally predominated through the assistance of the emperor. It seems, however, to have existed chiefly among the nobility; the spirit of the people was thoroughly Guelf. After several revolutions, accompanied by alternate proscription and demolition of houses, the Guelf party, through the assistance of Charles of Anjou, obtained a final ascendency in 1266; and after one or two unavailing schemes of accommodation, it was established as a fundamental law in the Florentine constitution, that no person of Ghibelin ancestry could be admitted to offices of public trust; which, in such a government, was in effect an exclusion from the privileges of citizenship.

Cities of Tuscany. Florence.

The changes of internal government and vicissitudes of success among factions were so frequent at Florence, for many years after this time, that she is compared by her great banished poet to a sick man, who, unable to rest, gives himself momentary ease, by continual change of posture in his bed.† They did not become much less numerous after the age of Dante Yet the revolutions of Florence should perhaps be considered as no more than a necessary price of her liberty. It was her boast and her happiness to have escaped, except for one short period, that odious rule of vile usurpers, under which so many other free cities had been crushed. A sketch of the constitution of so famous a republic ought not to be omitted in this place. Nothing else in the history of Italy after Frederick II. is so worthy of our attention.*

Government of Florence.

The basis of the Florentine polity was a division of the citizens exercising commerce, into their several companies or *arts*. These were at first twelve, seven called the greater arts, and five lesser; but the latter were gradually increased to fourteen. The seven greater arts were those of lawyers and notaries, of dealers in foreign cloth, called sometimes Calimala, of bankers or money-changers, of woollen-drapers, of physicians and druggists, of dealers in silk, and of furriers. The inferior arts were those of retailers of cloth, butchers, smiths, shoemakers, and builders. This division, so far at least as regarded the greater arts, was as old as the beginning of the thirteenth century.† But it was fully established, and rendered essential to the constitution, in 1266. By the provisions made in that year, each of the seven greater arts had a council of its own, a chief magistrate or consul, who administered justice in civil causes to all members of his company, and a banneret (gonfaloniere) or military officer, to whose standard they repaired when any attempt was made to disturb the peace of the city.

The administration of criminal justice belonged at Florence, as at other cities, to a foreign podestà, or rather to two foreign magistrates, the podestà and the capitano del popolo, whose jurisdiction, so far as I can trace it, appears to have been concurrent.‡ In the first part of the thirteenth century, the authority of the podestà may have been more extensive than afterward. These offices were preserved till the innovations of the Medici. The domestic magistracies underwent more changes. Instead of consuls, which had been the first denomination of the chief magistrates of Florence, a col-

* Villani, l. v., c. 12.

† E se ben ti ricordi, e vedi il lume,
Vedrai te somigliante a quella inferma,
Che non può trovar posa in sù le piume,
Ma con dar volta suo dolore scherma
Purgatorio, cant. vi

* I have found considerable difficulties in this part of my task; no author with whom I am acquainted giving a tolerable view of the Florentin government, except M. Sismondi, who is himself not always satisfactory.

† Ammirato ad ann. 1204 et 1235. Villani intimates, l. vii., c. 13, that the arts existed as commercial companies before 1266. Machiavelli and Sismondi express themselves rather inaccurately, as if they had been erected at that time, which indeed is the era of their political importance.

‡ Matteo Villani, p. 194. G. Villani places the institution of the podestà in 1207; we find it however as early as 1184 --Ammirato

ege of twelve or fourteen persons, called Anziani or Buonuomini, but varying in name as well as number according to revolutions of party, was established about the middle of the thirteenth century, to direct public affairs.* This order was entirely changed in 1282, and gave place to a new form of supreme magistracy, which lasted till the extinction of the republic. Six priors, elected every two months, from each of the six quarters of the city, and from each of the greater arts, except that of lawyers, constituted an executive magistracy. They lived, during their continuance in office, in a palace belonging to the city, and were maintained at the public cost. The actual priors, jointly with the chiefs and councils (usually called la capitudine) of the seven greater arts, and with certain adjuncts (arroti) named by themselves, elected by ballot their successors. Such was the practice for about forty years after this government was established. But an innovation, begun in 1324, and perfected four years afterward, gave a peculiar character to the constitution of Florence. A lively and ambitious people, not merely jealous of their public sovereignty, but deeming its exercise a matter of personal enjoyment; aware, at the same time, that the will of the whole body could neither be immediately expressed on all occasions, nor even through chosen representatives, without the risk of violence and partiality, fell upon the singular idea of admitting all citizens, not unworthy by their station or conduct, to offices of magistracy by rotation. Lists were separately made out by the priors, the twelve buonuomini, the chiefs and councils of arts, the bannerets and other respectable persons, of all citizens, Guelfs by origin, turned of thirty years of age, and, in their judgment, worthy of public trust. The lists thus formed were then united, and those who had composed them meeting together, in number ninety-seven, proceeded to ballot upon every name. Whoever obtained sixty-eight *black* balls was placed upon the reformed list; and all the names it contained, being put on separate tickets into a bag or purse (imborsati), were drawn successively as the magistracies were renewed. As there were above fifty of these, none of which could be held for more than four months, several hundred citizens were called in rotation to bear their share in the government within two years. But, at the expiration of every two years, the scrutiny was renewed, and fresh names were mingled with those which still continued undrawn; so that accident might deprive a man for life of his portion of sovereignty.*

Four councils had been established by the constitution of 1266, for the decision of all propositions laid before them by the executive magistrates, whether of a legislative nature or relating to public policy. These were now abrogated, and in their places were substituted one of 300 members, all plebeians, called consiglio di popolo, and one of 250, called consiglio di commune, into which the nobles might enter. These were changed by the same rotation as the magistracies, every four months.† A parliament, or general assembly of the Florentine people, was rarely convoked; but the leading principle of a democratical republic, the ultimate sovereignty of the multitude, was not forgotten. This constitution of 1324 was fixed by the citizens at large in parliament; and the same sanction was given to those temporary delegations of the signiory to a prince, which occasionally took place. What is technically called by their historians *farsi popolo*, was the assembly of a parliament, or a resolution of all derivative powers into the immediate operation of the popular will.

The ancient government of this republic appears to have been chiefly in the hands of its nobility. These were very numerous, and possessed large estates in the district. But by the constitution of 1266, which was nearly coincident with the triumph of the Guelf faction, the essential powers of magistracy, as well as of legislation, were thrown into the scale of the commons. The colleges of arts, whose functions became so eminent, were altogether commercial. Many indeed of the nobles enrolled themselves in these companies, and were among the most conspicuous merchants of Florence. These were not excluded from the executive college of the priors, at its first institution in 1282. It was necessary, however, to belong to one or other of the great arts in order to reach that magistracy. The majority, therefore, of the ancient families, saw themselves pushed

* G. Villani, vi., c. 39

* Villani, l. ix., c. 27; l. x., c. 110; l. xi., c. 105. Sismondi, t. v., p. 174. This species of lottery, recommending itself by an apparent fairness and incompatibility with undue influence, was speedily adopted in all the neighbouring republics, and has always continued, according to Sismondi, in Lucca, and in those cities of the ecclesiastical state which preserved the privilege of choosing their municipal officers, p. 95. † Id. Ibid

aside from the helm, which was intrusted to a class whom they naturally held in contempt.

It does not appear that the nobility made any overt opposition to these democratical institutions. Confident in a force beyond the law, they cared less for what the law might provide against them. They still retained the proud spirit of personal independence which had belonged to their ancestors in the fastnesses of the Apennines. Though the laws of Florence, and a change in Italian customs, had transplanted their residence to the city, it was in strong and lofty houses that they dwelt, among their kindred, and among the fellows of their rank. Notwithstanding the tenour of the constitution, Florence was, for some years after the establishment of priors, incapable of resisting the violence of her nobility. Her historians all attest the outrages and assassinations committed by them on the inferior people. It was in vain that justice was offered by the podestà and the capitano del popolo. Witnesses dared not to appear against a noble offender; or if, on a complaint, the officer of justice arrested the accused, his family made common cause to rescue their kinsman, and the populace rose in defence of the laws, till the city was a scene of tumult and bloodshed. I have already alluded to this insubordination of the higher classes as general in the Italian republics; but the Florentine writers, being fuller than the rest, are our best specific testimonies.*

[A. D. 1295.] The dissensions between the patrician and plebeian orders ran very high, when Giano della Bella, a man of ancient lineage, but attached, without ambitious views, so far as appears, though not without passion, to the popular side, introduced a series of enactments exceedingly disadvantageous to the ancient aristocracy. The first of these was the appointment of an executive officer, the gonfalonier of justice; whose duty it was to enforce the sentences of the podestà and capitano del popolo, in cases where the ordinary officers were insufficient. A thousand citizens, afterward increased to four times that number, were bound to obey his commands. They were distributed into companies, the gonfaloniers or captains of which became a sort of corporation or college, and a constituent part of government. [A. D. 1295.] This new militia seems to have superseded that of the companies of arts, which I have not observed to be mentioned at any later period. The gonfalonier of justice was part of the signiory along with the priors, of whom he was reckoned the president, and changed like them every two months. He was, in fact, the first magistrate of Florence.* If Giano della Bella had trusted to the efficacy of this new security for justice, his fame would have been beyond reproach. But he followed it up by harsher provisions. The nobility were now made absolutely ineligible to the office of prior. For an offence committed by one of a noble family, his relations were declared responsible in a penalty of 3000 pounds. And, to obviate the difficulty arising from the frequent intimidation of witnesses, it was provided that common fame, attested by two credible persons, should be sufficient for the condemnation of a nobleman.†

These are the famous ordinances of justice, which passed at Florence for the great charter of her democracy. They have been reprobated in later times as scandalously unjust, and I have little inclination to defend them. The last, especially, was a violation of those eternal principles, which forbid us, for any calculations of advantage, to risk the sacrifice of innocent blood. But it is impossible not to perceive that the same unjust severity has sometimes, under a like pretext of necessity, been applied to the weaker classes of the people, which they were in this instance able to exercise towards their natural superiors.

The nobility were soon aware of the position in which they stood. For half a century their great object was to procure the relaxation of the ordinances of justice. But they had no success with an elated enemy. In three years' time, indeed, Giano della Bella, the author of these institutions, was driven into exile; a conspicuous, though by no means singular, proof of Florentine ingratitude.‡

* Villani, l. vii., c. 113; l. viii. c. 8. Ammirato, Storia Fiorentina, l. iv., in cominciamento.

* It is to be regretted, that the accomplished biographer of Lorenzo de' Medici should have taken no pains to inform himself of the most ordinary particulars in the constitution of Florence. Among many other errors, he says, vol. ii., p. 51, 5th edit., that the gonfalonier of justice was subordinate to the delegated mechanics (a bad expression), or priori dell' arti, whose number too he augments to ten. The proper style of the republic seems to run thus: I priori dell' arti e gonfaloniere di giustizia, il popolo e 'l comune della città di Firenze.—G. Villani, l. xii., c. 109.

† Villani, l. viii., c. 1. Ammirato, p. 288, edit 1647. A magistrate, called l' esecutor della giustizia, was appointed with authority equal to that of the podestà, for the special purpose of watching over the observation of the ordinances of justice. Ammirato, p. 666.

‡ Villani, l. viii., c. 8

The wealth and physical strength of the nobles were however untouched; and their influence must always have been considerable; in the great feuds of Bianchi and Neri, the ancient families were most distinguished. No man plays a greater part in the annals of Florence at the beginning of the fourteenth century than Corso Donati, chief of the latter faction, who might pass as representative of the turbulent, intrepid, ambitious citizen-noble of an Italian republic.* But the laws gradually became more sure of obedience; the sort of proscription which attended the ancient nobles lowered their spirit; while a new aristocracy began to raise its head, the aristocracy of families who, after filling the highest magistracies for two or three generations, obtained an hereditary importance, which answered the purpose of more unequivocal nobility; just as in ancient Rome, plebeian families, by admission to curule offices, acquired the character and appellation of nobility, and were only distinguishable by their genealogy from the original patricians.† Florence had her plebeian nobles (popolani grandi), as well as Rome: the Peruzzi, the Ricci, the Albizi, the Medici, correspond to the Catos, the Pompeys, the Brutuses, and the Antonies. But at Rome the two orders, after an equal partition of the highest offices, were content to respect their mutual privileges; at Florence the commoners preserved a rigorous monopoly, and the distinction of high birth was, that it debarred men from political franchises and civil justice.‡

This second aristocracy did not obtain much more of the popular affection than that which it superseded. Public outrage and violation of law became less frequent; but the new leaders of Florence are accused of continual misgovernment at home and abroad, and sometimes of peculation. There was of course a strong antipathy between the leading commoners and the ancient nobles; both were disliked by the people. In order to keep the nobles under more control, the governing party more than once introduced a new foreign magistrate, with the title of captain of defence (della guardia), whom they invested with an almost unbounded criminal jurisdiction. [A. D. 1336–1340.] One Gabrielli, of Agobbio, was twice fetched for this purpose; and in each case he behaved in so tyrannical a manner as to occasion a tumult.* His office, however, was of short duration, and the title at least did not import a sovereign command. But very soon afterward Florence had to experience one taste of a cup which her neighbours had drunk off to the dregs, and to animate her magnanimous love of freedom by a knowledge of the calamities of tyranny.

A war with Pisa, unsuccessfully, if not unskilfully, conducted, gave rise to such dissatisfaction in the city, that the leading commoners had recourse to an appointment something like that of Gabrielli, and from similar motives. Walter de Brienne, duke of Athens, was descended from one of the French crusaders who had dismembered the Grecian empire in the preceding century; but his father, defeated in battle, had lost the principality along with his life, and the titular duke was an adventurer in the court of France. He had been, however, slightly known at Florence on a former occasion. There was a uniform maxim among the Italian republics, that extraordinary powers should be conferred upon none but strangers. The Duke of Athens was accordingly pitched upon for the military command, which was united with domestic jurisdiction. This appears to have been promoted by the governing party, in order to curb the nobility; but they were soon undeceived in their expectations. The first act of the Duke of Athens was to bring four of the most eminent commoners to capital punishment for military offences. These sentences, whether just or otherwise, gave much pleasure to the nobles, who had so frequently been exposed to similar severity, and to the populace, who are naturally pleased with the humiliation of their superiors. Both of these were caressed by the duke, and both conspired, with blind passion, to second his ambitious views. It was proposed and carried in a full parliament, or assembly of the people, to bestow upon him the signiory for life. [A. D. 1342.] The real friends of their country, as well as the oligarchy, shuddered at this measure. Throughout all the vicissitudes of party

* Dino Compagni. Villani.

† La nobiltà civile, se bene non in baronaggi, è capace di grandissimi honori, perciochè esercitando i supremi magistrati della sua patria, viene spesso a comandare a capitani d' eserciti e ella stessa per se ò in mare, ò in terra, molte volta i supremi carichi adopera. E tale è la Fiorentina nobiltà.—Ammirato delle Famiglie Fiorentine. Firenze, 1614, p. 25.

‡ Quello, che all' altre città suole recare splendore, in Firenze era dannoso, o veramente vano e nutile, says Ammirato of nobility.—Storia Fiorentina, p. 161.

* Villani, l. xi., c. 79 and 117.

Florence had never yet lost sight of republican institutions. Not that she had never accommodated herself to temporary circumstances by naming a signior. Charles of Anjou had been invested with that dignity for the term of ten years; Robert, king of Naples, for five; and his son, the Duke of Calabria, was at his death signior of Florence. These princes named the podestà, if not the priors; and were certainly pretty absolute in their executive powers, though bound by oath not to alter the statutes of the city.* But their office had always been temporary. Like the dictatorship of Rome, it was a confessed, unavoidable evil; a suspension, but not extinguishment of rights. Like that, too, it was a dangerous precedent, through which crafty ambition and popular rashness might ultimately subvert the republic. If Walter de Brienne had possessed the subtle prudence of a Matteo Visconti, or a Cane della Scala, there appears no reason to suppose that Florence would have escaped the fate of other cities; and her history might have become as useless a record of perfidy and assassination as that of Mantua or Verona.†

But, happily for Florence, the reign of tyranny was very short. The Duke of Athens had neither judgment nor activity for so difficult a station. He launched out at once into excesses, which it would be desirable that arbitrary power should always commit at the outset. The taxes were considerably increased; their produce was dissipated. The honour of the state was sacrificed by an inglorious treaty with Pisa; her territory was diminished by some towns throwing off their dependance. Severe and multiplied punishments spread terror through the city. The noble families, who had on the duke's election destroyed the ordinances of justice, now found themselves exposed to the more partial caprice of a despot. He filled the magistracies with low creatures from the inferior artificers; a class which he continued to flatter.‡ Ten months passed in this manner, when three separate conspiracies, embracing most of the nobility and of the great commoners, were planned for the recovery of freedom. The duke was protected by a strong body of hired cavalry. Revolutions in an Italian city were generally effected by surprise. The streets were so narrow and so easily secured by barricades, that if a people had time to stand on its defence, no cavalry was of any avail. On the other hand, a body of lancers in plate-armour might dissipate any number of a disorderly populace. Accordingly, if a prince or usurper would get possession by surprise, he, as it was called, *rode the city;* that is, galloped with his cavalry along the streets, so as to prevent the people from collecting to erect barricades. This expression is very usual with historians of the fourteenth century.* The conspirators at Florence were too quick for the Duke of Athens. The city was barricaded in every direction; and, after a contest of some duration, he consented to abdicate his signiory.

Thus Florence recovered her liberty. Her constitutional laws now seemed to revive of themselves. But the nobility, who had taken a very active part in the recent liberation of their country, thought it hard to be still placed under the rigorous ordinances of justice. Many of the richer commoners acquiesced in an equitable partition of magistracies, which was established through the influence of the bishop. But the populace of Florence, with its characteristic forgetfulness of benefits, was tenacious of those proscriptive ordinances. The nobles too, elated by their success, began again to strike and injure the inferior citizens. A new civil war in the city streets decided their quarrel; after a desperate resistance, many of the principal houses were pillaged and burnt; and the perpetual exclusion of the nobility was confirmed by fresh laws. But the people, now sure of their triumph, relaxed a little upon this occasion the ordinances of justice; and, to make some distinction in favour of merit or innocence, effaced certain families from the list of nobility. Five hundred and thirty persons were thus elevated, as we may call it, to the rank of commoners.† As it was beyond the competence of the republic of Florence to change a man's ancestors, this nominal alteration left all the real advantages of birth as they were, and was undoubtedly an enhancement of dignity, though in appearance a very singular one. Con

* Villani, l. ix. c. 55, 60, 135, 328.
† Id., l. xii., c. 2, 3. ‡ Id., c. 8.

* Villani, l. x., c. 81. Castruccio . . . . corse la città di Pisa due volte.—Sismondi, t. v., p. 105.
† Villani, l. xii., c. 18-23. Sismondi says, by a momentary oversight, cinq cent trente *familles*. t. v., p. 377. There were but thirty-seven noble families at Florence; as M. Sismondi himself informs us, t. iv., p. 66; though Villani reckons the number of individuals at 1500. Nobles, or *grandi*, as they are more strictly called, were such as had been inscribed, or rather proscribed, as such in the ordinances of justice; at least I do not know what other definition there was.

versely, several unpopular commoners were ennobled, in order to disfranchise them. Nothing was more usual, in subsequent times, than such an arbitrary change of rank, as a penalty or a benefit.* Those nobles who were rendered plebeian by favour were obliged to change their name and arms.† The constitution now underwent some change. From six the priors were increased to eight; and, instead of being chosen from each of the greater arts, they were taken from the four quarters of the city, the lesser artisans, as I conceive, being admissible. The gonfaloniers of companies were reduced to sixteen. And these, along with the signiory, and the twelve buonuomini, formed the college, where every proposition was discussed before it could be offered to the councils for their legislative sanction. But it could only originate, strictly speaking, in the signiory, that is, the gonfalonier of justice and eight priors, the rest of the college having merely the function of advice and assistance.‡

Several years elapsed before any material disturbance arose at Florence. Her contemporary historian complains indeed that mean and ignorant persons obtained the office of prior, and ascribes some errors in her external policy to this cause.§ Besides the natural effects of the established rotation, a particular law, called the *divieto*, tended to throw the better families out of public office. By this law, two of the same name could not be drawn for any magistracy: which, as the ancient families were extremely numerous, rendered it difficult for their members to succeed; especially as a ticket once drawn was not replaced in the purse, so that an individual liable to the divieto was excluded until the next biennial revolution.‖ This created dissatisfaction among the leading families. They were likewise divided by a new faction, entirely founded, as far as appears, on personal animosity between two prominent houses, the Albizi and the Ricci. The city was however tranquil, when, in 1357, a spring was set in motion, which gave quite a different character to the domestic history of Florence.

At the time when the Guelfs, with the assistance of Charles of Anjou, acquired an exclusive domination in the republic the estates of the Ghibelins were confiscated. One third of these confiscations was allotted to the state; another went to repair the losses of Guelf citizens; but the remainder became the property of a new corporate society, denominated the Guelf party (parte Guelfa) with a regular internal organization. The Guelf party had two councils, one of fourteen and one of sixty members; three, or afterward four, captains, elected by scrutiny every two months, a treasury, and common seal; a little republic within the republic of Florence. Their primary duty was to watch over the Guelf interest: and for this purpose they had a particular officer for the accusation of suspected Ghibelins.* We hear not much, however, of the Guelf society for near a century after their establishment. The Ghibelins hardly ventured to show themselves after the fall of the White Guelfs in 1304, with whom they had been connected, and confiscation had almost annihilated that unfortunate faction. But, as the oligarchy of Guelf families lost part of its influence through the divieto and system of lottery, some persons of Ghibelin descent crept into public offices; and this was exaggerated by the zealots of an opposite party, as if the fundamental policy of the city was put into danger.

The Guelf society had begun, as early as 1346, to manifest some disquietude at the foreign artisans, who, settling at Florence, and becoming members of some of the trading corporations, pretended to superior offices. They procured accordingly a law, excluding from public trust and magistracy all persons not being natives of the city or its territory. Next year they advanced a step farther; and, with the view to prevent disorder, which seemed to threaten the city, a law was passed, declaring every one, whose ancestors at any time since 1300 had been known Ghibelins, or who had not the reputation of sound Guelf principles, incapable of being drawn or elected to offices.† It is manifest, from the language of the historian who relates these circumstances, and whose testimony is more remarkable from his having died several years before the politics of the Guelf corporation more decidedly showed themselves, that the real cause of their jeal

* Messer Antonio di Baldinaccio degli Adimari, tutto che fosse de più grandi e nobili, per grazia era messo tra 'l popolo.—Villani, l. xii., c. 108.

† Ammirato, p. 748. There were several exceptions to this rule in later times. The Pazzi were made popolani, plebeians, by favour of Cosmo de' Medici.—Machiavelli.

‡ Nardi, Storia di Firenze, p. 7, edit. 1584. Villani, loc. cit.

§ Matteo Villani, in Script. Rer. Italic. t. xiv., p. 98–244.

‖ Sismondi, t vi. p 338.

* G. Villani, l. vii., c. 16.

† Ibid. l. xii., c. 72 and 79.

ousy was no the increase of Ghibelinism, a merely plausible pretext, but the democratical character which the government had assumed, since the revolution of 1343; which raised the fourteen inferior arts to the level of those which the great merchants of Florence exercised. In the Guelf society, the ancient nobles retained a considerable influence. The laws of exclusion had never been applied to that corporation. Two of the captains were always noble, two were commoners. The people, in debarring the nobility from ordinary privileges, were little aware of the more dangerous channel which had been left open to their ambition. With the nobility some of the great commoners acted in concert, and especially the family and faction of the Albizi. The introduction of obscure persons into office still continued, and some measures more vigorous than the law of 1347 seemed necessary to restore the influence of their aristocracy. They proposed, and, notwithstanding the reluctance of the priors, carried by violence, both in the preliminary deliberations of the signiory, and in the two councils, a law by which every person accepting an office who should be convicted of Ghibelinism or of Ghibelin descent, upon testimony of public fame, became liable to punishment, capital or pecuniary, at the discretion of the priors. To this law they gave a retrospective effect, and indeed it appears to have been little more than a revival of the provisions made in 1347, which had probably been disregarded. Many citizens, who had been magistrates within a few years, were cast in heavy fines on this indefinite charge. But the more usual practice was to warn (ammonire) men beforehand against undertaking public trust. If they neglected this hint, they were sure to be treated as convicted Ghibelins. Thus a very numerous class, called Ammoniti, was formed of proscribed and discontented persons, eager to throw off the intolerable yoke of the Guelf society. For the imputation of Ghibelin connexions was generally an unfounded pretext for crushing the enemies of the governing faction.* Men of approved Guelf principles and origin were every day warned from their natural privileges of sharing in magistracy. This spread a universal alarm through the city; but the great advantage of union and secret confederacy rendered the Guelf society, who had also the law on their side irresistible by their opponents. Meanwhile the public honour was well supported abroad; Florence had never before been so distinguished as during the prevalence of this oligarchy.*

The Guelf society had governed with more or less absoluteness for near twenty years, when the republic became involved, through the perfidious conduct of the papal legate, in a war with the Holy See. Though the Florentines were by no means superstitious, this hostility to the church appeared almost an absurdity to determined Guelfs, and shocked those prejudices about names which make up the politics of vulgar minds. The Guelf society, though it could not openly resist the popular indignation against Gregory XI., was not heartily inclined to this war. Its management fell therefore into the hands of eight commissioners, some of them not well affected to the society; whose administration was so successful and popular as to excite the utmost jealousy in the Guelfs. They began to renew their warnings, and in eight months excluded fourscore citizens.†

The tyranny of a court may endure for ages; but that of a faction is seldom permanent. In June, 1378, the gonfalonier of justice was Salvestro de' Medici, a man of approved patriotism, whose family had been so notoriously of Guelf principles that it was impossible to warn him from office. He proposed to mitigate the severity of the existing law. His proposition did not succeed; but its rejection provoked an insurrection, the forerunner of still more alarming tumults. The populace of Florence, like that of other cities, was terrible in the moment of sedition; and a party so long dreaded shrunk before the physical strength of the multitude. Many leaders of the Guelf society had their houses destroyed, and some fled from the city. But instead of annulling their acts, a middle course was adopted by the committee of magistrates who had been empowered to reform the state; the Ammoniti were suspended three

* Besides the effect of ancient prejudice, Ghibelinism was considered at Florence, in the fourteenth century, as immediately connected with tyrannical usurpation. The Guelf party, says Matteo Villani, is the foundation rock of liberty in Italy; so that, if any Guelf becomes a tyrant, he must of necessity turn to the Ghibelin side; and of this there have been many instances, p. 481. So Giovanni Villani says of Passerino, lord of Mantua, that his ancestors had been Guelfs, ma per essere signore e tiranno si fece Ghibellino, l. x., c. 99. And Matteo Villani of the Pepoli at Bologna, essendo di natura Guelfi, per la tirannia erano quasi alienati della parte, p. 69.

* M. Villani, p. 581, 637, 731 Ammirato. Machiavelli. Sismondi.

† Ammirato, p. 709.

years longer from office, and the Guelf society preserved with some limitations. This temporizing course did not satisfy either the Ammoniti or the populace. The greater arts were generally attached to the Guelf society. Between them and the lesser arts, composed of retail and mechanical traders, there was a strong jealousy. The latter were adverse to the prevailing oligarchy, and to the Guelf society, by whose influence it was maintained. They were eager to make Florence a democracy in fact as well as in name, by participating in the executive government.

But every political institution appears to rest on too confined a basis, to those whose point of view is from beneath it. While the lesser arts were murmuring at the exclusive privileges of the commercial aristocracy, there was yet an inferior class of citizens, who thought their own claims to equal privileges irrefragable. The arrangement of twenty-one trading companies had still left several kinds of artisans unincorporated, and consequently unprivileged. These had been attached to the art with which their craft had most connexion, in a sort of dependant relation. Thus, to the company of drapers, the most wealthy of all the various occupations instrumental in the manufacture, as wool-combers, diers, and weavers, were appendant.* Besides the sense of political exclusion, these artisans alleged, that they were oppressed by their employers of the art, and that when they complained to the consul, their judge in civil matters, no redress could be procured. A still lower order of the community was the mere populace, who did not practise any regular trade, or who only worked for daily hire. These were called Ciompi, a corruption, it is said, of the French compère.

"Let no one," says Machiavel in this place, "who begins an innovation in a state, expect that he shall stop it at his pleasure, or regulate it according to his intention." After about a month from the first sedition, another broke out, in which the ciompi, or lowest populace, were alone concerned. Through the surprise, or cowardice, or disaffection of the superior citizens, this was suffered to get ahead, and for three days the city was in the hand of a tumultuous rabble. It was vain to withstand their propositions, had they even been more unreasonable than they were. But they only demanded the establishment of two new arts for the trades hitherto dependant, and one for the lower people; and that three of the priors should be chosen from the greater arts, three from the fourteen lesser, and two from those just created. Some delay, however, occurring to prevent the sanction of these innovations by the councils, a new fury took possession of the populace; the gates of the palace belonging to the signiory were forced open, the priors compelled to fly, and no appearance of a constitutional magistracy remained to throw the veil of law over the excesses of anarchy. The republic seemed to rock from its foundation, and the circumstance to which historians ascribe its salvation is not the least singular in this critical epoch. One Michel di Lando, a wool-carder, half dressed and without shoes, happened to hold the standard of justice wrested from the proper officer when the populace burst into the palace. Whether he was previously conspicuous in the tumult is not recorded; but the wild capricious mob, who had destroyed what they had no conception how to rebuild, suddenly cried out that Lando should be gonfalonier or signior, and reform the city at his pleasure.

A choice, arising probably from wanton folly, could not have been better made by wisdom. Lando was a man of courage, moderation, and integrity. He gave immediate proofs of these qualities by causing his office to be respected. The eight commissioners of the war, who, though not instigators of the sedition, were well pleased to see the Guelf party so entirely prostrated, now fancied themselves masters, and began to nominate priors. But Lando sent a message to them that he was elected by the people, and that he could dispense with their assistance. He then proceeded to the choice of priors. Three were taken from the greater arts; three from the lesser; and three from the two new arts and the lower people. This eccentric college lost no time in restoring tranquillity, and compelled the populace by threat of punishment to return to their occupations. But the ciompi were not disposed to give up the pleasures of anarchy so readily. They were dissatisfied at the small share allotted to them in the new distribution of offices, and murmured at their gonfalonier as a traitor to the popular cause. Lando was aware that an insurrection was projected; he took measures with the most respectable citizens the insurgents, when they showed themselves, were quelled by force, and th

* Before the year 1340, according to Villani's calculation, the woollen trade occupied 30,000 persons, l. xi., c. 93.

gonfalonier retired from office with an approbation which all historians of Florence have agreed to perpetuate. Part of this has undoubtedly been founded on a consideration of the mischief which it was in his power to inflict. The ciompi, once checked, were soon defeated. The next gonfalonier was, like Lando, a woolcomber; but, wanting the intrinsic merit of Lando, his mean station excited universal contempt. None of the arts could endure their low coadjutors; a short struggle was made by the populace, but they were entirely overpowered with considerable slaughter, and the government was divided between the seven greater and sixteen lesser arts in nearly equal proportions.

The party of the lesser arts, or inferior tradesmen, which had begun this confusion, were left winners when it ceased. Three men of distinguished families, who had instigated the revolution, became the leaders of Florence; Benedetto Alberti, Tomaso Strozzi, and Georgio Scali. Their government had at first to contend with the ciompi, smarting under loss and disappointment. But a populace which is beneath the inferior mechanics may with ordinary prudence be kept in subjection by a government that has a well-organized militia at its command. The Guelf aristocracy was far more to be dreaded. Some of them had been banished, some fined, some ennobled; the usual consequences of revolution, which they had too often practised to complain. A more iniquitous proceeding disgraces the new administration. Under pretence of conspiracy, the chief of the house of Albizi, and several of his most eminent associates, were thrown into prison. So little evidence of the charge appeared, that the podestà refused to condemn them; but the people were clamorous for blood, and half with, half without the forms of justice, these noble citizens were led to execution. The part he took in this murder sullies the fame of Benedetto Alberti, who, in his general conduct, had been more uniformly influenced by honest principles than most of his contemporaries. Those who shared with him the ascendency in the existing government, Strozzi and Scali, abused their power by oppression towards their enemies and insolence towards all. Their popularity was of course soon at an end. Alberti, a sincere lover of freedom, separated himself from men who seemed to emulate the arbitrary government they had overthrown. An outrage of Scali, in rescuing a criminal from justice, brought the discontent to a crisis; he was arrested, and lost his head on the scaffold; while Strozzi, his colleague fled from the city. But this event was instantly followed by a reaction, which Alberti perhaps did not anticipate. Armed men filled the streets; the cry of Live the Guelfs was heard. After a three years depression, the aristocratical party regained its ascendant. They did not revive the severity practised towards the Ammoniti; but the two new arts, created for the small trades, were abolished, and the lesser arts reduced to a third part, instead of something more than one half of public offices. Several persons who had favoured the plebeians were sent into exile; and among these Michel de Lando, whose great services in subduing anarchy ought to have secured the protection of every government. Benedetto Alberti, the enemy by turns of every faction, because every faction was in its turn oppressive experienced some years afterward the same fate. For half a century after this time, no revolution took place at Florence. The Guelf aristocracy, strong in opulence and antiquity, and rendered prudent by experience, under the guidance of the Albizi family, maintained a preponderating influence without much departing, the times considered, from moderation and respect for the laws *

It is sufficiently manifest, from this sketch of the domestic history of Florence, how far that famous republic was from affording a perfect security for civil rights or general tranquillity. They who hate the name of free constitutions may exult in her internal dissensions, as in those of Athens or Rome. But the calm philosopher will not take his standard of comparison from ideal excellence, nor even from that practical good which has been reached in our own unequalled constitution, and in some of the republics of modern Europe. The men and the institutions of the fourteenth century are to be measured by their contemporaries. Who would not rather have been a citizen of Florence than a subject of the Visconti? In a superficial review of history, we are sometimes apt to exaggerate

* For this part of Florentine history, besides Ammirato, Machiavel, and Sismondi, I have read an interesting narrative of the sedition of the ciompi, by Gino Capponi, in the eighteenth volume of Muratori's collection. It has an air of liveliness and truth which is very pleasing, but it breaks off rather too soon, at the instant of Lando's assuming the office of banneret. Another contemporary writer, Melchione de Stefani, who seems to have furnished the materials of the three historians above mentioned, has not fallen in my way

he vices of free states, and to lose sight of those inherent in tyrannical power. The bold censoriousness of republican historians, and the cautious servility of writers under an absolute monarchy, conspire to mislead us as to the relative prosperity of nations. Acts of outrage and tumultuous excesses in a free state are blazoned in minute detail, and descend to posterity; the deeds of tyranny are studiously and perpetually suppressed. Even those historians who have no particular motives for concealment turn away from the monotonous and disgusting crimes of tyrants. "Deeds of cruelty," it is well observed by Matteo Villani, after relating an action of Bernabo Visconti, "are little worthy of remembrance; yet let me be excused for having recounted one out of many, as an example of the peril to which men are exposed under the yoke of an unbounded tyranny."* The reign of Bernabo afforded abundant instances of a like kind. Second only to Eccelin among the tyrants of Italy, he rested the security of his dominion upon tortures and death, and his laws themselves enact the protraction of capital punishment through forty days of suffering.† His nephew, Giovanni Maria, is said, with a madness like that of Nero or Commodus, to have coursed the streets of Milan by night with bloodhounds, ready to chase and tear any unlucky passenger.‡ Nor were other Italian principalities free from similar tyrants, though none perhaps on the whole so odious as the Visconti. The private history of many families, such for instance as the Scala and the Gonzaga, is but a series of assassinations. The ordinary vices of mankind assumed a teint of portentous guilt in the palaces of Italian princes. Their revenge was fratricide, and their lust was incest.

Though fertile and populous, the proper district of Florence was by no means extensive. An independent nobility occupied the Tuscan Apennines with their castles. Of these the most conspicuous were the counts of Guidi, a numerous and powerful family, who possessed a material influence in the affairs of Florence and of all Tuscany till the middle of the fourteenth century, and some of whom preserved their independence much longer.§

Acquisitions of territory by Florence.

To the south, the republics of Arezzo Perugia, and Siena; to the west, those of Volterra, Pisa, and Lucca; Prato and Pistoja to the north, limited the Florentine territory. It was late before these boundaries were removed. During the usurpations of Uguccione at Pisa, and of Castruccio at Lucca, the republic of Florence was always unsuccessful in the field. After the death of Castruccio she began to act more vigorously, and engaged in several confederacies with the powers of Lombardy, especially in a league with Venice against Mastino della Scala. But the republic made no acquisition of territory till 1351, when she annexed the small city of Prato, not ten miles from her walls.* Pistoja, though still nominally independent, received a Florentine garrison about the same time. Several additions were made to the district, by fair purchase from the nobility of the Apennines, and a few by main force. The territory was still very little proportioned to the fame and power of Florence The latter was founded upon her vast commercial opulence. Every Italian state employed mercenary troops, and the richest was of course the most powerful. In the war against Mastino della Scala, in 1336, the revenues of Florence are reckoned by Villani at three hundred thousand florins; which, as he observes, is more than the King of Naples or of Aragon possesses.† The expenditure went at that time very much beyond the receipt, and was defrayed by loans from the principal mercantile firms, which were secured by public funds; the earliest instance, I believe, of that financial resource.‡ Her population was computed at ninety thousand souls. Villani reckons the district at eighty thousand men, I presume those only of military age; but this calculation must have been too large, even though he included, as we

* P. 434.

† Sismondi, t. vi., p. 316. Corio, Ist. di Milano, p. 436.

‡ Corio, p. 595.

§ G Villani, l v., c. 37, 41, et alibi. The last of the counts Guidi, having unwisely embarked in a confederacy against Florence, was obliged to give up his ancient patrimony in 1440.

* M. Villani, p. 72. This was rather a measure of usurpation; but the republic had some reason to apprehend that Prato might fall into the hands of the Visconti. Their conduct towards Pistoja was influenced by the same motive; but it was still further removed from absolute justice. p. 91.

† G. Villani, l. xi., c. 90–93. These chapters contain a very full and interesting statement of the revenues, expenses, population, and internal condition of Florence at that time. Part of them is extracted by M. Sismondi, t. v., p. 365. The gold florin was worth about ten shillings of our money. The district of Florence was not then much larger than Middlesex. At present the revenues of the whole dutchy of Tuscany are much less than 150,000*l.* sterling; though the difference in the value of money is very considerable.

‡ G. Villani, l. xi., c. 49

may presume, the city in his estimate.* Tuscany, though well cultivated and flourishing, does not contain by any means so great a number of inhabitants in that space at present.

Pisa

The first eminent conquest made by Florence was that of Pisa, early in the fifteenth century. Pisa had been distinguished as a commercial city ever since the age of the Othos. From her ports, and those of Genoa, the earliest naval armaments of the western nations were fitted out against the Saracen corsairs who infested the Mediterranean coasts. In the eleventh century she undertook, and, after a pretty long struggle, completed, the important, or at least the splendid conquest of Sardinia; an island long subject to a Moorish chieftain. Several noble families of Pisa, who had defrayed the chief cost of this expedition, shared the island in districts which they held in fief of the republic. At a later period the Balearic isles were subjected, but not long retained by Pisa. Her naval prowess was supported by her commerce. A writer of the twelfth century reproaches her with the Jews, the Arabians, and other "monsters of the sea," who thronged in her streets.† The crusades poured fresh wealth into the lap of the maritime Italian cities. In some of those expeditions a great portion of the armament was conveyed by sea to Palestine, and freighted the vessels of Pisa, Genoa, and Venice. When the Christians had bought with their blood the seacoast of Syria, these republics procured the most extensive privileges in the new states that were formed out of their slender conquests, and became the conduits through which the produce of the East flowed in upon the ruder natives of Europe. Pisa maintained a large share of this commerce, as well as of maritime greatness, till near the end of the thirteenth century. In 1282, we are told by Villani, she was in great power, possessing Sardinia, Corsica, and Elba; from whence the republic, as well as private persons, derived large revenues; and almost ruled the sea by their ships and merchandises, and beyond sea were very powerful in the city of Acre, and much connected with the principal citizens of Acre.‡ The prosperous era of the Pisans is marked by their public edifices. She was the first Italian city that took a pride in architectural magnificence. Her cathedral is of the eleventh century; the baptistery, the famous inclined tower, or belfry, the arcades that surround the Campo Santo, or cemetery of Pisa, are of the twelfth, or at latest, of the thirteenth.§

It would have been no slight anomaly in the annals of Italy, or, we might say, of mankind, if two neighbouring cities, competitors in every mercantile occupation and every naval enterprise, had not been perpetual enemies to each other. One is more surprised, if the fact be true, that no war broke out between Pisa and Genoa till 1119.‖ From this time at least

* C. 93. Troviamo diligentemente, che in questi tempi avea in Firenze circa a 25 mila uomini da portare arme da 15 in 70 anni — Istamavasi avere in Firenze da 90 mila bocche tra uomini e femine e fanciulli, per l' avviso del pane bisognava al continuo alla città. These proportions of 25,000 men between fifteen and seventy, and of 90,000 souls, are as nearly as possible consonant to modern calculation, of which Villani knew nothing, which confirms his accuracy; though M. Sismondi asserts, p. 369, that the city contained 150,000 inhabitants, on no better authority, as far as appears, than that of Boccaccio, who says that 100,000 perished in the great plague of 1348, which was generally supposed to destroy two out of three. But surely two vague suppositions are not to be combined, in order to overthrow such a testimony as that of Villani, who seems to have consulted all registers and other authentic documents in his reach.

What Villani says of the population of the district may lead us to reckon it, perhaps, at about 180,000 souls, allowing the baptisms to be one in thirty of the population. Ragionavasi in questi tempi avere nel contado e distretto di Firenze de 80 mila uomini. Troviamo del piovano, che battezzava i fanciulli, imperoche per ogni maschio, che battezzava in San Giovanni, per avere il novero, metea una fava nera, e per ogni femina una bianca, trovò, ch' erano l'anno in questi tempi dalle 5800 in sei mila, avanzando le più volte il sesso masculino da 300 in 500 per anno. Baptisms could only be performed in one public font, at Florence, Pisa, and some other cities. The building that contained this font was called the baptistery. The baptisteries of Florence and Pisa still remain, and are well known.—Du Cange, v. Baptisterium. But there were fifty-seven parishes, and one hundred and ten churches within the city.—Villani, ibid. Mr. Roscoe has published a manuscript, evidently written after the taking of Pisa, in 1406, though, as I should guess, not long after that event, containing a proposition for an income tax of ten per cent. throughout the Florentine dominions. Among its other calculations, the population is reckoned at 400,000; assuming that to be the proportion to 80,000 men of military age, though certainly beyond the mark. It is singular that the district of Florence, in 1343, is estimated by Villani to contain as great a number, before Pisa, Volterra, or even Prato and Pistoja had been annexed to it.—Roscoe's Life of Lorenzo, Appendix, No. 16.

* Sismondi, t. i., p. 345, 372.

† Qui pergit Pisas, videt illic monstra marina,
Hæc urbs Paganis, Turchis, Libycis quoque Parthis,
Sordida; Chaldæi sua lustrant mœnia tetri.
Donizo, Vita Comitissæ Mathildis, apud Muratori, Dissert. 31.

‡ Villani, l. vi., c. 83.

§ Sismondi, t. iv., p. 178. Tiraboschi, t. iii., p. 406.

‖ Muratori, ad ann. 1119.

they continually recurred. An equality of forces and of courage kept the conflict uncertain for the greater part of two centuries. Their battles were numerous, and sometimes, taken separately, decisive; but the public spirit and resources of each city were called out by defeat, and we generally find a new armament replace the losses of an unsuccessful combat. In this respect, the naval contest between Pisa and Genoa, though much longer protracted, resembles that of Rome and Carthage in the first Punic war. But Pisa was reserved for her Ægades. In one fatal battle, off the little isle of Meloria, in 1284, her whole navy was destroyed. Several unfortunate and expensive armaments had almost exhausted the state; and this was the last effort, by private sacrifices, to equip one more fleet. After this defeat it was in vain to contend for empire. Eleven thousand Pisans languished for many years in prison; it was a current saying, that whoever would see Pisa, should seek her at Genoa. A treacherous chief, that Count Ugolino, whose guilt was so terribly avenged, is said to have purposely lost the battle, and prevented the ransom of the captives, to secure his power; accusations that obtain easy credit with an unsuccessful people.

From the epoch of the battle of Meloria, Pisa ceased to be a maritime power. Forty years afterward she was stripped of her ancient colony, the Island of Sardinia. The four Pisan families who had been invested with that conquest had been apt to consider it as their absolute property; their appellation of judge seemed to indicate deputed power; but they sometimes assumed that of king; and several attempts had been made to establish an immediate dependance on the empire, or even on the pope. A new potentate had now come forward on the stage. The malecontent feudataries of Sardinia made overtures to the King of Aragon, who had no scruples about attacking the indisputable possession of a declining republic. Pisa made a few unavailing efforts to defend Sardinia; but the nominal superiority was hardly worth a contest, and she surrendered her rights to the crown of Aragon. Her commerce now dwindled with her greatness. During the fourteenth century, Pisa almost renounced the ocean, and directed her main attention to the politics of Tuscany Ghibelin by invariable predilection, she was in constant opposition to the Guelf cities which looked up to Florence But in the fourteenth century the names of freeman and Ghibelin were not easily united; and a city in that interest stood insulated between the republics of an opposite faction and the tyrants of her own. Pisa fell several times under the yoke of usurpers; she was included in the wide-spreading acquisitions of Gian Galeazzo Visconti; at his death one of his family seized the dominion, and finally, the Florentines purchased for 400,000 florins a rival and once equal city. The Pisans made a resistance more according to what they had been, than what they were.

The early history of Genoa, in all her foreign relations, is involved in that of Pisa. As allies against the Saracens of Africa, Spain, and the Mediterranean islands, as co-rivals in commerce with these very Saracens, or with the Christians of the East, as co-operators in the great expeditions under the banner of the cross, or as engaged in deadly warfare with each other, the two republics stand in continual parallel. From the beginning of the thirteenth century, Genoa was, I think, the more prominent and flourishing of the two. She had conquered the Island of Corsica at the same time that Pisa reduced Sardinia; and her acquisition, though less considerable, was longer preserved. Her territory at home, the ancient Liguria was much more extensive, and, what was most important, contained a greater range of seacoast than that of Pisa. But the commercial and maritime prosperity of Genoa may be dated from the recovery of Constantinople by the Greeks in 1261. Jealous of the Venetians, by whose arms the Latin emperors had been placed, and were still maintained on their throne, the Genoese assisted Palæologus in overturning that usurpation They obtained in consequence the suburb of Pera or Galata over against Constantinople as an exclusive settlement, where their colony was ruled by a magistrate sent from home, and frequently defied the Greek capital with its armed galleys and intrepid seamen. From this convenient station Genoa extended her commerce into the Black Sea, and established her principal factory at Caffa, in the Crimean peninsula. This commercial monopoly, for such she endeavoured to render it, aggravated the animosity of Venice. As Pisa retired from the field of waters, a new enemy appeared upon the horizon to dispute the maritime dominion of Genoa. Her first war with Venice was in 1258 The second was not till after the victory of Me-

Genoa.—Her wars

And Venice

loria had crushed her more ancient enemy. It broke out in 1293, and was prosecuted with determined fury, and a great display of naval strength on both sides. One Genoese armament, as we are assured by an historian, consisted of one hundred and fifty-five galleys, each manned with from two hundred and twenty to three hundred sailors;* a force astonishing to those who know the slender resources of Italy in modern times, but which is rendered credible by several analogous facts of good authority. It was, however, beyond any other exertion. The usual fleets of Genoa and Venice were of seventy to ninety galleys.

Perhaps the naval exploits of these two republics may afford a more interesting spectacle to some minds than any other part of Italian history. Compared with military transactions of the same age, they are more sanguinary, more brilliant, and exhibit full as much skill and intrepidity. But maritime warfare is scanty in circumstances, and the indefiniteness of its locality prevents it from resting in the memory. And though the wars of Genoa and Venice were not always so unconnected with territorial politics as those of the former city with Pisa, yet, from the alternation of success and equality of forces, they did not often produce any decisive effect. One memorable encounter in the Sea of Marmora, where the Genoese fought and conquered single-handed against the Venetians, the Catalans, and the Greeks, hardly belongs to Italian history.†

War of Chioggia

But the most remarkable war, and that productive of the greatest consequences, was one that commenced in 1378, after several acts of hostility in the Levant, wherein the Venetians appear to have been the principal aggressors. Genoa did not stand alone in this war. A formidable confederacy was exerted against Venice, who had given provocation to many enemies. Of this Francis Carrara, signor of Padua, and the King of Hungary, were the leaders. But the principal struggle was, as usual, upon the waves. During the winter of 1378, a Genoese fleet kept the sea, and ravaged the shores of Dalmatia. The Venetian armament had been weakened by an epidemic disease, and when Vittor Pisani, their admiral, gave battle to the enemy, he was compelled to fight with a hasty conscription of landsmen against the best sailors in the world. Entirely defeated, and taking refuge at Venice with only seven galleys. Pisani was cast into prison, as if his ill fortune had been his crime. Meanwhile the Genoese fleet, augmented by a strong re-enforcement rode before the long natural ramparts that separate the lagunes of Venice from the Adriatic. Six passages intersect the islands which constitute this barrier, besides the broader outlets of Brondolo and Fossone, through which the waters of the Brenta and the Adige are discharged The lagune itself, as is well known, consists of extremely shallow water, unnavigable for any vessel, except along the course of artificial and intricate passages Notwithstanding the apparent difficulties of such an enterprise, Pietro Doria, the Genoese admiral, determined to reduce the city. His first successes gave him reason to hope. He forced the passage and stormed the little town of Chioggia,* built upon the inside of the isle bearing that name, about twenty-five miles south of Venice. Nearly four thousand prisoners fell here into his hands: an augury as it seemed, of a more splendid triumph In the consternation this misfortune inspired at Venice, the first impulse was to ask for peace. The ambassadors carried with them seven Genoese prisoners, as a sort of peace-offering to the admiral, and were empowered to make large and humiliating concessions, reserving nothing but the liberty of Venice. Francis Carrara strongly urged his allies to treat for peace. But the Genoese were stimulated by long hatred, and intoxicated by this unexpected opportunity of revenge. Doria, calling the ambassadors into council, thus addressed them:—"Ye shall obtain no peace from us, I swear to you, nor from the Lord of Padua, till first we have put a curb in the mouths of those wild horses that stand upon the place of St. Mark. When they are bridled, you shall have enough of peace. Take back with you your Genoese captives, for I am coming within a few days to release both them and their companions from your prisons." When this answer was reported to the senate, they prepared to defend themselves with the characteristic firmness of their government. Every eye was turned towards a great man unjustly punished, their admiral, Vittor Pisani. He was called out of prison to defend his country amid general acclamations; but, equal in magnanimity and simple republican patriotism to the noblest characters of antiquity, Pisani re-

* Muratori A. D 1295. † Gibbon, c. 63

* Chioggia, known at Venice by the name of Chioza, according to the usage of the Venetian dialect, which changes the *g* into *z*

pressed the favouring voices of the multitude, and bade them reserve their enthusiasm for St. Mark, the symbol and warcry of Venice. Under the vigorous command of Pisani, the canals were fortified or occupied by large vessels, armed with artillery; thirty-four galleys were equipped; every citizen contributed according to his power; in the entire want of commercial resources (for Venice had not a merchant-ship during this war), private plate was melted; and the senate held out the promise of ennobling thirty families, who should be most forward in this strife of patriotism.

The new fleet was so ill provided with seamen, that for some months the admiral employed them only in manœuvring along the canals. From some unaccountable supineness, or more probably from the insuperable difficulties of the undertaking, the Genoese made no assault upon the city. They had, indeed, fair grounds to hope its reduction by famine or despair. Every access to the continent was cut off by the troops of Padua; and the King of Hungary had mastered almost all the Venetian towns in Istria and along the Dalmatian coast. The Doge Contarini, taking the chief command, appeared at length with his fleet near Chioggia, before the Genoese were aware. They were still less aware of his secret design. He pushed one of the large round vessels, then called *cocche*, into the narrow passage of Chioggia, which connects the lagune with the sea, and mooring her athwart the channel, interrupted that communication. Attacked with fury by the enemy, this vessel went down on the spot, and the doge improved his advantage, by sinking loads of stones, until the passage became absolutely unnavigable. It was still possible for the Genoese fleet to follow the principal canal of the lagune towards Venice and the northern passages, or to sail out of it by the harbour of Brondolo; but whether from confusion or from miscalculating the dangers of their position, they suffered the Venetians to close the canal upon them by the same means they had used at Chioggia, and even to place their fleet in the entrance of Brondolo, so near to the lagune that the Genoese could not form their ships in line of battle. The circumstances of the two combatants were thus entirely changed. But the Genoese fleet, though besieged in Chioggia, was impregnable, and their command of the land secured them from famine. Venice, notwithstanding her unexpected success was still very far from secure; it was difficult for the doge to keep his position through the winter; and if the enemy could appear in open sea, the risks of combat were extremely hazardous. It is said that the senate deliberated upon transporting the seat of their liberty to Candia, and that the doge had announced his intention to raise the siege of Chioggia, if expected succours did not arrive by the first of January, 1380. On that very day, Carlo Zeno, an admiral, who, ignorant of the dangers of his country, had been supporting the honour of her flag in the Levant and on the coasts of Liguria, appeared with a re-enforcement of eighteen galleys and a store of provisions. From that moment the confidence of Venice revived. The fleet, now superior in strength to the enemy, began to attack them with vivacity. After several months of obstinate resistance, the Genoese, whom their republic had ineffectually attempted to relieve by a fresh armament, blocked up in the town of Chioggia, and pressed by hunger, were obliged to surrender. Nineteen galleys only out of forty-eight were in good condition; and the crews were equally diminished in the ten months of their occupation of Chioggia. The pride of Genoa was deemed to be justly humbled; and even her own historian confesses, that God would not suffer so noble a city as Venice to become the spoil of a conqueror.*

Each of the two republics had sufficient reason to lament their mutual prejudices, and the selfish cupidity of their merchants, which usurps in all maritime countries the name of patriotism. Though the capture of Chioggia did not terminate the war, both parties were exhausted, and willing next year to accept the mediation of the Duke of Savoy. By the peace of Turin, Venice surrendered most of her territorial possessions to the King of Hungary. That prince, and Francis Carrara, were the only gainers. Genoa obtained the Isle of Tenedos, one of the original subjects of dispute; a poor indemnity for her losses. Though, upon a hasty view, the result of this war appears more unfavourable to Venice, yet in fact it is the epoch of the decline of Genoa. From this time she never commanded the ocean with such navies as before; her commerce gradually went into decay; and the fifteenth century, the most

* G. Stella, Annales Genuenses; Gataro, Istoria Padovana. Both these contemporary works, of which the latter gives the best relation, are in the seventeenth volume of Muratori's collection. M. Sismondi's narrative is very clear and spirited.—Hist. des Républ. Ital. vii., p. 205–232.

splendid in the annals of Venice, is, till recent times, the most ignominious in those of Genoa. But this was partly owing to internal dissensions, by which her liberty, as well as glory, was for a while suspended.

Government of Genoa

At Genoa, as in other cities of Lombardy, the principal magistrates of the republic were originally styled consuls. A chronicle, drawn up under the inspection of the senate, perpetuates the names of these early magistrates It appears that their number varied from four to six, annually elected by the people in their full parliament. These consuls presided over the republic, and commanded the forces by land and sea; while another class of magistrates, bearing the same title, were annually elected by the several companies into which the people were divided, for the administration of civil justice.* This was the regimen of the twelfth century; but in the next, Genoa fell into the fashion of intrusting the executive power to a foreign podestà. The podestà was assisted by a council of eight, chosen by the eight companies of nobility. This institution, if indeed it were any thing more than a custom or usurpation, originated probably not much later than the beginning of the thirteenth century. It gave not only an aristocratic, but almost an oligarchical character to the constitution, since many of the nobility were not members of these eight societies. Of the senate or councils we hardly know more than their existence; they are very little mentioned by historians. Every thing of a general nature, every thing that required the expression of public will, was reserved for the entire and unrepresented sovereignty of the people. In no city was the parliament so often convened; for war, for peace, for alliance, for change of government.† These very dissonant elements were not likely to harmonize. The people, sufficiently accustomed to the forms of democracy to imbibe its spirit, repined at the practical influence which was thrown into the scale of the nobles. Nor did some of the latter class scruple to enter that path of ambition, which leads to power by flattery of the populace. Two or three times within the thirteenth century, a highborn demagogue had nearly overturned the general liberty, like the Torriani at Milan, through the pretence of defending that of individuals.‡ Among the nobility themselves, four houses were distinguished beyond all the rest; the Grimaldi, the Fieschi, the Doria, the Spinola; the two former of Guelf politics, the latter adherents of the empire.* Perhaps their equality of forces, and a jealousy which even the families of the same faction entertained of each other, prevented any one from usurping the signiory at Genoa. Neither the Guelf nor Ghibelin party obtaining a decisive preponderance, continual revolutions occurred in the city. The most celebrated was the expulsion of the Ghibelins under the Doria and Spinola, in 1318. They had recourse to the Visconti of Milan, and their own resources were not unequal to cope with their country. The Guelfs thought it necessary to call in Robert, king of Naples, always ready to give assistance as the price of dominion, and conferred upon him the temporary sovereignty of Genoa. A siege of several years duration, if we believe an historian of that age, produced as many remarkable exploits as that of Troy. They have not proved so interesting to posterity The Ghibelins continued for a length of time excluded from the city, but in possession of the seaport of Savona, whence they traded and equipped fleets, as a rival republic, and even entered into a separate war with Venice.† Experience of the uselessness of hostility, and the loss to which they exposed their common country, produced a reconciliation, or rather a compromise, in 1331, when the Ghibelins returned to Genoa. But the people felt that many years of misfortune had been owing to the private enmities of four overbearing families. An opportunity soon offered of reducing their influence within very narrow bounds.

Election of the first Doge.

The Ghibelin faction was at the head of affairs in 1339, a Doria and a Spinola being its leaders, when the discontent of a large fleet in want of pay broke out in open insurrection. Savona and the neighbouring towns took arms avowedly against the aristocratical tyranny; and the capital was itself on the point of joining the insurgents. There was, by the Genoese constitution, a magistrate, named the abbot of the people, acting as a kind of tribune for their protection against the oppression of the nobility. His functions are not, however, in any book I have seen, very clearly defined. This office had been abolished by the present government, and it was the first demand of the malecontents that it should be restored. This was acceded to, and twenty delegates

* Sismondi, t. i., p. 353.
† Id., t. iii. p. 319 ‡ Id., p. 324.

* Sismondi, t. iii p. 328.
† Villani, l. ix., passim.

were appointed to make the choice. While they delayed and the populace was grown weary of waiting, a nameless artisan called out from an elevated station that he could direct them to a fit person. When the people, in jest, bade him speak on, he uttered the name of Simon Boccanegra. This was a man of noble birth, and well esteemed, who was then present among the crowd. The word was suddenly taken up; a cry was heard that Boccanegra should be abbot; he was instantly brought forward, and the sword of justice forced into his hand. As soon as silence could be obtained, he modestly thanked them for their favour, but declined an office which his nobility disqualified him from exercising. At this, a single voice out of the crowd exclaimed *Signior!* and this title was reverberated from every side. Fearful of worse consequences, the actual magistrates urged him to comply with the people, and accept the office of abbot. But Boccanegra, addressing the assembly, declared his readiness to become their abbot, signior, or whatever they would. The cry of signior was now louder than before; while others cried out let him be duke. The latter title was received with greater approbation; and Boccanegra was conducted to the palace, the first duke, or doge of Genoa.*

Subsequent revolutions.

Caprice alone, or an idea of more pomp and dignity, led the populace, we may conjecture, to prefer this title to that of signior; but it produced important and highly beneficial consequences. In all neighbouring cities, an arbitrary government had been already established under their respective signiors; the name was associated with indefinite power: while that of doge had only been taken by the elective and very limited chief magistrate of another maritime republic. Neither Boccanegra nor his successors ever rendered their authority unlimited or hereditary. The constitution of Genoa, from an oppressive aristocracy, became a mixture of the two other forms, with an exclusion of the nobles from power. Those four great families who had domineered alternately for almost a century, lost their influence at home after the revolution of 1339. Yet, what is remarkable enough, they were still selected in preference for the highest of trusts; their names are still identified with the glory of Genoa; her fleets hardly sailed but under a Doria, a Spinola, or a Grimaldi; such confidence could the republic bestow upon their patriotism, or that of those whom they commanded. Meanwhile two or three new families, a plebeian oligarchy, filled their place in domestic honours; the Adorni, the Fregosi, the Montalti, contended for the ascendant. From their competition ensued revolutions too numerous almost for a separate history; in four years, from 1390 to 1394, the doge was ten times changed; swept away or brought back in the fluctuations of popular tumult. Antoniotto Adorno, four times doge of Genoa, had sought the friendship of Gian Galeazzo Visconti; but that crafty tyrant meditated the subjugation of the republic, and played her factions against one another to render her fall secure. Adorno perceived that there was no hope for ultimate independence, but by making a temporary sacrifice of it. His own power, ambitious as he had been, he voluntarily resigned; and placed the republic under the protection or signiory of the King of France. Terms were stipulated very favourable to her liberties; but with a French garrison once received into the city, they were not always sure of observance.*

Venice

While Genoa lost even her political independence, Venice became more conspicuous and powerful than before. That famous republic deduces its original, and even its liberty, from an era beyond the commencement of the middle ages. The Venetians boast of a perpetual emancipation from the yoke of barbarians. From that ignominious servitude some natives, or, as their historians will have it, nobles of Aquileja and neighbouring towns,† fled to the small cluster of islands that rise amid the shoals at the mouth of the Brenta. Here they built the town of Rivoalto, the modern Venice, in 421; but their chief settlement was, till the beginning of the ninth century, at Malamocco. A living writer has, in a passage of remarkable eloquence, described the sovereign republic, immoveable upon the bosom of the waters, from which her palaces emerge, contemplating the successive tides of continental invasion, the rise and fall of empires, the change of dynasties, the whole moving scene of human revolution; till, in her own turn, the last surviving witness of antiquity, the common link between two periods of civilization, she has submitted to the destroying hand of time.‡ Some

* G. Stella, Annal. Genuenses a Script. Rer. Ital., t. xvii., p. 1072

* Sismondi, t. vii., p. 237, 367.

† Ebbe principe, says Sanuto haughtily, non da pastori, come ebbe Roma, ma da potenti, e nobili

‡ Sismondi, t. i., p. 309

part of this renown must, on a cold-blooded scrutiny, be detracted from Venice. Her independence was, at the best, the fruit of her obscurity. Neglected upon their islands, a people of fishermen might without molestation elect their own magistrates; a very equivocal proof of sovereignty in cities much more considerable than Venice. But both the western and the eastern empire alternately pretended to exercise dominion over her; she was conquered by Pepin, son of Charlemagne, and restored by him, as the Chronicles say, to the Greek emperor Nicephorus. There is every appearance that the Venetians had always considered themselves as subject, in a large sense, not exclusive of their municipal self-government, to the eastern empire.* And this connexion was not broken, in the early part, at least, of the tenth century. But, for every essential purpose, Venice might long before be deemed an independent state. Her doge was not confirmed at Constantinople; he paid no tribute, and lent no assistance in war. Her own navies, in the ninth century, encountered the Normans, the Saracens, and the Sclavonians in the Adriatic Sea. Upon the coast of Dalmatia were several Greek cities, which the empire had ceased to protect; and which, like Venice itself, became republics for want of a master. Ragusa was one of these, and, more fortunate than the rest, survived as an independent city till our own age. [A. D. 997.] In return for the assistance of Venice, these little seaports put themselves under her government; the Sclavonian pirates were repressed; and after acquiring, partly by consent, partly by arms, a large tract of maritime territory, the doge took the title of Duke of Dalmatia, which is said by Dandolo to have been confirmed at Constantinople. Three or four centuries, however, elapsed, before the republic became secure of these conquests, which were frequently wrested from her by rebellions of the inhabitants, or by her powerful neighbour, the King of Hungary.

Her dependance on the Greek empire.

Conquest of Dalmatia.

A more important source of Venetian greatness was commerce. In the darkest and most barbarous period, before Genoa or even Pisa had entered into mercantile pursuits, Venice carried on an extensive traffic both with the Greek and Saracen regions of the Levant. The crusades enriched and aggrandized Venice more, perhaps, than any other city. Her splendour may, however, be dated from the taking of Constantinople by the Latins in 1204. In this famous enterprise, which diverted a great armament destined for the recovery of Jerusalem, the French and Venetian nations were alone engaged; but the former only as private adventurers, the latter with the whole strength of their republic under its doge, Henry Dandolo. Three eighths of the city of Constantinople, and an equal proportion of the provinces, were allotted to them in the partition of the spoil, and the doge took the singular, but accurate title, duke of three eighths of the Roman empire. Their share was increased by purchases from less opulent crusaders, especially one of much importance, the Island of Candia, which they retained till the middle of the seventeenth century. These foreign acquisitions were generally granted out in fief to private Venetian nobles under the supremacy of the republic.* It was thus that the Ionian islands, to adopt the vocabulary of our day, came under the dominion of Venice, and guarantied that sovereignty which she now began to affect over the Adriatic. Those of the Archipelago were lost in the sixteenth century. This political greatness was sustained by an increasing commerce. No Christian state preserved so considerable an intercourse with the Mahometans. While Genoa kept the keys of the Black Sea by her colonies of Pera and Caffa, Venice directed her vessels to Acre and Alexandria. These connexions, as is the natural effect of trade, deadened the sense of religious antipathy; and the Venetians were sometimes charged with obstructing all efforts towards a new crusade, or even any par

Her acquisitions in the Levant

* Nicephorus stipulates with Charlemagne for his faithful city of Venice, Quæ in devotione imperii illibatæ steterant.—Danduli Chronicon, in Muratori, Script. Rer. Ital., t. xii., p. 156. In the tenth century, Constantine Porphyrogenitus, in his book De Administratione Imperii, claims the Venetians as his subjects, though he admits that they had, for peace' sake, paid tribute to Pepin and his successors as kings of Italy, p. 71. I have never seen the famous Squittinio della libertà Veneta, which gave the republic so much offence in the seventeenth century; but a very strong case is made out against their early independence in Giannone's history, t. ii., p. 283, edit. Haia, 1753. Muratori informs us, that so late as 1084, the doge obtained the title of Imperialis Protosevastos from the court of Constantinople; a title which he continued always to use.—(Annali d'Italia, ad ann.) But I should lay no stress on this circumstance. The Greek, like the German emperors in modern times, had a mint of specious titles, which passed for ready money over Christendom

* Sismondi, ii., p. 431

tual attacks upon the Mahometan nations.

The earliest form of government at Venice, as we collect from an epistle of Cassiodorus in the sixth century, was by twelve annual tribunes. Perhaps the union of the different islanders was merely federative. However, in 697, they resolved to elect a chief magistrate by name of duke, or, in their dialect, Doge of Venice. No councils appear to have limited his power, or represented the national will. The doge was general and judge; he was sometimes permitted to associate his son with him, and thus to prepare the road for hereditary power; his government had all the prerogatives, and, as far as in such a state of manners was possible, the pomp of a monarchy. But he acted in important matters with the concurrence of a general assembly, though from the want of positive restraints, his executive government might be considered as nearly absolute. Time, however, demonstrated to the Venetians the imperfections of such a constitution. Limitations were accordingly imposed on the doge in 1032; he was prohibited from associating a son in the government, and obliged to act with the consent of two elected counsellors, and, on important occasions, to call in some of the principal citizens. No other change appears to have taken place till 1172; long after every other Italian city had provided for its liberty by constitutional laws, more or less successful, but always manifesting a good deal of contrivance and complication. Venice was, however, dissatisfied with her existing institutions. General assemblies were found, in practice, inconvenient and unsatisfactory. Yet some adequate safeguard against a magistrate of indefinite powers was required by freemen. A representative council, as in other republics, justly appeared the best innovation that could be introduced.*

Venetian government.

The great council of Venice, as established in 1172, was to consist of four hundred and eighty citizens, equally taken from the six districts of the city, and annually renewed. But the election was not made immediately by the people. Two electors, called tribunes, from each of the six districts, appointed the members of the council by separate nomination. These tribunes, at first, were themselves chosen by the people; so that the intervention of this electoral body did not apparently trespass upon the democratical character of the constitution. But the great council, principally composed of men of high birth, and invested by the law with the appointment of the doge and of all the councils of magistracy, seem, early in the thirteenth century, to have assumed the right of naming their own constituents. Besides appointing the tribunes, they took upon themselves another privilege; that of confirming or rejecting their successors before they resigned their functions. These usurpations rendered the annual election almost nugatory; the same members were usually renewed, and, though the dignity of counsellor was not yet hereditary, it remained, upon the whole, in the same families. In this transitional state the Venetian government continued during the thirteenth century; the people actually debarred of power, but an hereditary aristocracy not completely or legally confirmed. The right of electing, or rather of re-electing, the great council, was transferred in 1297 from the tribunes, whose office was abolished, to the council of forty; they balloted upon the names of the members who already sat; and whoever obtained twelve favouring balls out of forty retained his place. The vacancies occasioned by rejection or death were filled up by a supplemental list, formed by three electors nominated in the great council. But they were expressly prohibited, by laws of 1298 and 1300, from inserting the name of any one whose paternal ancestors had not enjoyed the same honour. Thus an exclusive hereditary aristocracy was finally established. And the personal rights of noble descent were rendered complete in 1319, by the abolition of all elective forms. By the constitution of Venice, as it was then settled, every descendant of a member of the great council, on attaining twenty-five years of age, entered as of right into that body, which of course became unlimited in its numbers.*

* Sismondi, t. iii., p. 287. As I have never met with the Storia civile Veneta, by Vettor Sandi, in nine vols. 4to, or even Laugier's History of Venice, my reliance has chiefly been placed on M. Sismondi, who has made use of Sandi, the latest and probably most accurate historian. To avoid frequent reference, the principal passages in Sismondi relative to the domestic revolutions of Venice are, t. i., p. 323; t. iii., p. 287-300; t. iv., p. 349-370.

* These gradual changes between 1297 and 1319 were first made known by Sandi, from whom M. Sismondi has introduced the facts into his own history. I notice this because all former writers, both ancient and modern, fix the complete and final establishment of the Venetian aristocracy in 1297.

Twenty-five years complete was the statutable

But an assembly so numerous as the great council, even before it was thus thrown open to all the nobility, could never have conducted the public affairs with that secrecy and steadiness which were characteristic of Venice; and without an intermediary power between the doge and the patrician multitude, the constitution would have gained nothing in stability to compensate for the loss of popular freedom. The great council had proceeded, very soon after its institution, to limit the ducal prerogatives. That of exercising criminal justice, a trust of vast importance, was transferred, in 1179, to a council of forty members, annually chosen. The executive government itself was thought too considerable for the doge without some material limitations. Instead of naming his own assistants or pregadi, he was only to preside in a council of sixty members, to whom the care of the state in all domestic and foreign relations, and the previous deliberation upon proposals submitted to the great council, was confided. This council of pregadi, generally called in later times the senate, was enlarged in the fourteenth century by sixty additional members; and as a great part of the magistrates had also seats in it, the whole number amounted to between two and three hundred. Though the legislative power, properly speaking, remained with the great council, the senate used to impose taxes, and had the exclusive right of making peace and war. It was annually renewed, like almost all other councils at Venice, by the great council. But since even this body was too numerous for the preliminary discussion of business, six counsellors, forming, along with the doge, the signiory, or visible representative of the republic, were empowered to despatch orders, to correspond with ambassadors, to treat with foreign states, to convoke and preside in the councils, and perform other duties of an administration. In part of these they were obliged to act with the concurrence of what was termed the college, comprising, besides themselves, certain select counsellors from different constituted authorities.*

It might be imagined that a dignity so shorn of its lustre as that of doge would not excite an overweening ambition. But the Venetians were still jealous of extinguished power; and while their constitution was yet immature, the great council planned new methods of restricting their chief magistrate. An oath was taken by the doge on his election, so comprehensive as to embrace every possible check upon undue influence. He was bound not to correspond with foreign states, or to open their letters, except in the presence of the signiory; to acquire no property beyond the Venetian dominions, and to resign what he might already possess; to interpose, directly or indirectly, in no judicial process and not to permit any citizen to use tokens of subjection in saluting him. As a further security, they devised a remarkably complicated mode of supplying the vacancy of his office. Election by open suffrage is always liable to tumult or corruption; nor does the method of secret ballot, while it prevents the one, afford in practice any adequate security against the other. Election by lot incurs the risk of placing incapable persons in situations of arduous trust. The Venetian scheme was intended to combine the two modes without their evils, by leaving the absolute choice of their doge to electors taken by lot. It was presumed that, among a competent number of persons, though taken promiscuously, good sense and right principles would gain such an ascendency as to prevent any flagrantly improper nomination, if undue influence could be excluded. For this purpose, the ballot was rendered exceedingly complicated, that no possible ingenuity or stratagem might ascertain the electoral body before the last moment. A single lottery, if fairly conducted, is certainly sufficient for this end At Venice, as many balls as there were members of the great council present were placed in an urn. Thirty of these were gilt. The holders of gilt balls were reduced by a second ballot to nine. The nine elected forty, whom lot reduced to twelve. The twelve chose twenty-five by separate nomination.* The twenty-five were reduced by lot to nine; and each of the nine chose

age, at which every Venetian noble had a right to take his seat in the great council. But the names of those who had passed the age of twenty were annually put into an urn, and one fifth drawn out by lot, who were thereupon admitted. On an average, therefore, the age of admission was about twenty-three.—Jannotus de Rep. Venet. Contareni. Amelot de la Houssaye.

* The college of Savj consisted of sixteen persons, and it possessed the *initiative* in all public measures that required the assent of the senate. For no single senator, much less any noble of the great council, could propose any thing for debate. The signiory had the same privilege. Thus the virtual powers, even of the senate, were far more limited than they appear at first sight; and no possibility remained of innovation in the fundaments principles of the constitution.

* Amelot de la Houssaye asserts this; but, according to Contareni, the method was by ballot

five. These forty-five were reduced to eleven, as before; the eleven elected forty-one, who were the ultimate voters for a doge. This intricacy appears useless, and consequently absurd; but the original principle of a Venetian election (for something of the same kind was applied to all their councils and magistrates) may not always be unworthy of imitation. In one of our best modern statutes, that for regulating the trials of contested elections, we have seen this mixture of chance and selection very happily introduced.

An hereditary prince could never have remained quiet in such trammels as were imposed upon the Doge of Venice. But early prejudice accustoms men to consider restraint, even upon themselves, as advantageous; and the limitations of ducal power appeared to every Venetian as fundamental as the great laws of the English constitution do to ourselves. Many doges of Venice, especially in the middle ages, were considerable men; but they were content with the functions assigned to them, which, if they could avoid the tantalizing comparison of sovereign princes, were enough for the ambition of republicans. For life the chief magistrates of their country, her noble citizens for ever, they might thank her in their own name for what she gave, and in that of their posterity for what she withheld. Once only a doge of Venice was tempted to betray the freedom of the republic. [A. D. 1355.] Marin Falieri, a man far advanced in life, engaged, from some petty resentment, in a wild intrigue to overturn the government. The conspiracy was soon discovered, and the doge avowed his guilt. An aristocracy so firm and so severe did not hesitate to order his execution in the ducal palace.

For some years after what was called the closing of the great council of the law of 1296, which excluded all but the families actually in possession, a good deal of discontent showed itself among the commonalty. Several commotions took place about the beginning of the fourteenth century, with the object of restoring a more popular regimen. Upon the suppression of the last, in 1310, the aristocracy sacrificed their own individual freedom along with that of the people, to the preservation of an imaginary privilege. They established the famous council of ten, that most remarkable part of the Venetian constitution. This council, it should be observed, consisted in fact of seventeen; comprising the signiory, or the doge and his six counsellors, as well the ten properly so called. The council of ten had by usage if not by right, a controlling and dictatorial power over the senate, and other magistrates; rescinding their decisions, and treating separately with foreign princes. Their vast influence strengthened the executive government, of which they formed a part, and gave a vigour to its movements, which the jealousy of the councils would possibly have impeded. But they are chiefly known as an arbitrary and inquisitorial tribunal, the standing tyranny of Venice. Excluding the old council of forty, a regular court of criminal judicature, not only from the investigation of treasonable charges, but of several other crimes of magnitude, they inquired, they judged they punished, according to what they called reason of state. The public eye never penetrated the mystery of their proceedings; the accused was sometimes not heard, never confronted with witnesses; the condemnation was secret as the inquiry, the punishment undivulged like both.* The terrible and odious machinery of a police, the insidious spy, the stipendiary informer, unknown to the carelessness of feudal governments, found their natural soil in the republic of Venice. Tumultuous assemblies were scarcely possible in so peculiar a city; and private conspiracies never failed to be detected by the vigilance of the council of ten. Compared with the Tuscan republics, the tranquillity of Venice is truly striking. The names of Guelf and Ghibelin hardly raised any emotion in her streets, though the government was considered in the first part of the fourteenth century as rather inclined towards the latter party.† But the wildest excesses of faction are less dishonouring than the stillness and moral degradation of servitude.‡

* Illum etiam morem observant, ne reum, cum de eo judicium laturi sunt, in collegium admittant, neque cognitorem, aut oratorem quempiam, qui ejus causam agat.—Contareni de Rep. Venet.

† Villani several times speaks of the Venetians as regular Ghibelins, l. ix., c. 2; l. x., c. 89, &c. But this is put much too strongly: though their government may have had a slight bias towards that faction, they were in reality neutral, and far enough removed from any domestic feuds upon that score.

‡ By the modern law of Venice, a nobleman could not engage in trade without derogating from his rank; but I am not aware whether so absurd a restriction existed in the fourteenth and fifteenth centuries. I do not find this peculiarly observed by Jannotti and Contareni, the oldest writers on the Venetian government. It is noticed by Amelot de la Houssaye, who tells us also, that the nobility evaded the law by secret partnership with the privileged merchants, or cittadini, who formed a separate class at Venice. This was the custom in modern times. But I have never understood the

it was a very common theme with political writers, till about the beginning of the last century, when Venice fell almost into oblivion, to descant upon the wisdom of this government. And indeed, if the preservation of ancient institutions be, as some appear to consider it, not a means, but an end, and an end for which the rights of man and laws of God may at any time be set aside, we must acknowledge that it was a wisely constructed system. Formed to compress the two opposite forces from which resistance might be expected, it kept both the doge and the people in perfect subordination. Even the coalition of an executive magistrate with the multitude, so fatal to most aristocracies, never endangered that of Venice. It is most remarkable, that a part of the constitution which destroyed every man's security, and incurred general hatred, was still maintained by a sense of its necessity. The council of ten, annually renewed, might annually have been annihilated. The great council had only to withhold their suffrages from the new candidates, and the tyranny expired of itself. This was several times attempted (I speak now of more modern ages); but the nobles, though detesting the council of ten, never steadily persevered in refusing to re-elect it. It was, in fact, become essential to Venice. So great were the vices of her constitution, that she could not endure their remedies. If the council of ten had been abolished at any time since the fifteenth century, if the removal of that jealous despotism had given scope to the corruption of a poor and debased aristocracy, to the license of a people unworthy of freedom, the republic would have soon lost her territorial possessions, if not her own independence. If indeed it be true, as reported, that during the last hundred years this formidable tribunal had sensibly relaxed its vigilance, if the Venetian government had become less tyrannical through sloth, or decline of national spirit, our conjecture will have acquired the confirmation of experience. Experience has recently shown that a worse calamity than domestic tyranny might befall the queen of the Adriatic. In the place of St. Mark, among the monuments of extinguished greatness, a traveller may regret to think that an insolent German soldiery has replaced even the senators of Venice. Her ancient liberty, her bright and romantic career of glory in countries so dear to the imagination, her magnanimous defence in the war of Chioggia, a few thinly-scattered names of illustrious men, will rise upon his mind, and mingle with his indignation at the treachery which robbed her of her independence. But if he has learned the true attributes of wisdom in civil policy, he will not easily prostitute that word to a constitution formed without reference to property or to population, that vested sovereign power partly in a body of impoverished nobles, partly in an overruling despotism, or to a practical system of government that made vice the ally of tyranny, and sought impunity for its own assassinations by encouraging dissoluteness of private life. Perhaps, too, the wisdom so often imputed to the senate in its foreign policy has been greatly exaggerated. The balance of power established in Europe, and, above all, in Italy, maintained for the two last centuries states of small intrinsic resources, without any efforts of their own. In the ultimate crisis, at least, of Venetian liberty, that solemn mockery of statesmanship was exhibited to contempt; too blind to avert danger, too cowardly to withstand it, the most ancient government of Europe made not an instant's resistance; the peasants of Underwald died upon their mountains: the nobles of Venice clung only to their lives.*

Until almost the middle of the four-

principle or common sense of such a restriction, especially combined with that other fundamental law, which disqualified a Venetian nobleman from possessing a landed estate on the terra firma of the republic. The latter, however, did not extend, as I have been informed, to Dalmatia or the Ionian islands.

* See in the Edinburgh Review, vol. xii., p. 379, an account of a book, which is perhaps little known, though interesting to the history of our own age, a collection of documents illustrating the fall of the republic of Venice. The article is well written, and, I presume, contains a faithful account of the work; the author of which, Signor Barzoni, is respected as a patriotic writer in Italy.

Every one who has been at Venice must have been struck with the magnificent tombs of the doges, most of them in the church of S. Giovanni e Paolo, in which the republic seems to identify herself with her chief magistrate, and to make the decorations and inscriptions on his monument a record of her own wealth and glory. In the church of the Scalzi, on a single square stone in the pavement, a very different epitaph from that of Loredano or Foscari may be read, MANINI CINERES. These two words mark the place of interment of Manini, the last doge, whose own pusillanimity, or that of those around him, joined to the calamity of the times, caused him to survive his own dignity and the liberties of Venice. To my feelings this inscription was more striking than the famous *Locus Marini Falieri, pro criminibus decapitati*, upon a vacant canvass among the pictures of the doges in the hall of the Great Council

Territorial acquisitions of Venice.

teenth century, Venice had been content without any territorial possessions in Italy; unless we reckon a very narrow strip of seacoast, bordering on her lagunes, called the Dogato. Neutral in the great contests between the church and the empire, between the free cities and their sovereigns, she was respected by both parties, while neither ventured to claim her as an ally. But the rapid progress of Mastino della Scala, lord of Verona, with some particular injuries, led the senate to form a league with Florence against him. Villani mentions it as a singular honour for his country to have become the confederate of the Venetians, "who, for their great excellence and power, had never allied themselves with any state or prince, except at their ancient conquest of Constantinople and Romania."* The result of this combination was to annex the district of Treviso to the Venetian dominions. But they made no further conquests in that age. On the contrary, they lost Treviso in the unfortunate war of Chioggia, and did not regain it till 1389. Nor did they seriously attempt to withstand the progress of Gian Galeazzo Visconti; who, after overthrowing the family of Scala, stretched almost to the Adriatic, and altogether subverted for a time the balance of power in Lombardy.

State of Lombardy at the beginning of the fifteenth century.

But upon the death of this prince in 1404, a remarkable crisis took place in that country. He left two sons, Giovanni Maria and Filippo Maria, both young, and under the care of a mother who was little fitted for her situation. Through her misconduct, and the selfish ambition of some military leaders, who had commanded Gian Galeazzo's mercenaries, that extensive dominion was soon broken into fragments. Bergamo, Como, Lodi, Cremona, and other cities revolted, submitting themselves in general to the families of their former princes, the earlier race of usurpers, who had for nearly a century been crushed by the Visconti. A Guelf faction revived, after the name had long been proscribed in Lombardy. Francesco de Carrara, lord of Padua, availed himself of this revolution to get possession of Verona, and seemed likely to unite all the cities beyond the Adige. No family was so odious to the Venetians as that of Carrara. Though they had seemed indifferent to the more real danger in Gian Galeazzo's lifetime, they took up arms against this inferior enemy. Both Padua and Verona were reduced, and the Duke of Milan ceding Vicenza, the republic of Venice came suddenly into the possession of an extensive territory. Francesco de Carrara, who had surrendered in his capital, was put to death in prison at Venice; a cruelty perfectly characteristic of that government, and which would hardly have been avowedly perpetrated, even in the fifteenth century, by any other state in Europe.

Notwithstanding the deranged condition of the Milanese, no further attempts were made by the senate of Venice for twenty years. They had not yet acquired that decided love of war and conquest, which soon began to influence them against all the rules of their ancient policy. There were still left some wary statesmen of the old school to check ambitious designs. Sanuto has preserved an interesting account of the wealth and commerce of Venice in those days. This is thrown into the mouth of the Doge Mocenigo, whom he represents as dissuading his country, with his dying words, from undertaking a war against Milan "Through peace our city has every year,' he said, "ten millions of ducats employed as mercantile capital in different parts of the world; the annual profit of our traders upon this sum amounts to four millions. Our housing is valued at 7,000,000 ducats, its annual rental at 500,000. Three thousand merchant ships carry on our trade; forty-three galleys, and three hundred smaller vessels, manned by 19,000 sailors, secure our naval power Our mint has coined 1,000,000 ducats within the year. From the Milanese dominions alone we draw 1,000,000 ducats in coin, and the value of 900,000 more in cloths; our profit upon this traffic may be reckoned at 600,000 ducats. Proceeding as you have done to acquire this wealth, you will become masters of all the gold in Christendom; but war, and especially unjust war, will lead infallibly to ruin. Already you have spent 900,000 ducats in the acquisition of Verona and Padua; yet the expense of protecting these places absorbs all the revenue which they yield You have many among you, men of probity and experience; choose one of these to succeed me; but beware of Francesco Foscari. If he is doge, you will soon have war, and war will bring poverty and loss of honour."* Mocenigo died, and

* L. xi c. 49

* Sanuto, Vite di Duchi di Venezia, in Script. Rer. Ital., t. xxii., p. 958. Mocenigo's harangue is very long in Sanuto: I have endeavoured to preserve the substance

Foscari became doge: the prophecies of the former were neglected; and it cannot wholly be affirmed that they were fulfilled. Yet Venice is described by a writer thirty years later, as somewhat impaired in opulence by her long warfare with the dukes of Milan.

Wars of Milan and Venice.

The latter had recovered a great part of their dominions as rapidly as they had lost them. Giovanni Maria, the elder brother, a monster of guilt even among the Visconti, having been assassinated, Filippo Maria assumed the government of Milan and Pavia, almost his only possessions. But, though weak and unwarlike himself, he had the good fortune to employ Carmagnola, one of the greatest generals of that military age. Most of the revolted cities were tired of their new masters, and their inclinations conspiring with Carmagnola's eminent talents and activity, the house of Visconti reassumed its former ascendency from the Sessia to the Adige. Its fortunes might have been still more prosperous, if Filippo Maria had not rashly, as well as ungratefully, offended Carmagnola. That great captain retired to Venice, and inflamed a disposition towards war which the Florentines and the Duke of Savoy had already excited. The Venetians had previously gained some important advantages in another quarter, by reducing the country of Friuli, with part of Istria, which had for many centuries depended on the temporal authority of a neighbouring prelate, the patriarch of Aquileia. They entered into this new alliance. No undertaking of the republic had been more successful. Carmagnola led on their armies, and in about two years [A. D. 1426] Venice acquired Brescia and Bergamo, and extended her boundary to the river Adda, which she was destined never to pass.

Change in the military system.

Such conquests could only be made, by a city so peculiarly maritime as Venice, through the help of mercenary troops. But in employing them she merely conformed to a fashion, which states to whom it was less indispensable had long since established. A great revolution had taken place in the system of military service through most parts of Europe, but especially in Italy. During the twelfth and thirteenth centuries, whether the Italian cities were engaged in their contest with the emperors, or in less arduous and general hostilities among each other, they seem to have poured out almost their whole population, as an armed and loosely organized militia. A single city, with its adjacent district sometimes brought twenty or thirty thousand men into the field. Every man, according to the trade he practised, or quarter of the city wherein he dwelt, knew his own banner, and the captain he was to obey.* In battle, the carroccio formed one common rallying-point, the pivot of every movement. This was a chariot, or rather wagon, painted with vermilion, and bearing the city standard elevated upon it. That of Milan required four pair of oxen to drag it forward.† To defend this sacred emblem of his country, which Muratori compares to the ark of the covenant among the Jews, was the constant object, that, giving a sort of concentration and uniformity to the army, supplied in some degree the want of more regular tactics. This militia was of course principally composed of infantry. At the famous battle of the Arbi, in 1260, the Guelf Florentines had thirty thousand foot and three thousand horse;‡ and the usual proportion was five, six, or ten, to one. Gentlemen, however, were always mounted; and the superiority of a heavy cavalry must have been prodigiously great over an undisciplined and ill-armed populace. In the thirteenth and following centuries, armies seem to have been considered as formidable, nearly in proportion to the number of men-at-arms, or lancers. A charge of cavalry was irresistible; battles were continually won by inferior numbers, and vast slaughter was made among the fugitives.§

Employment of foreign troops

As the comparative inefficiency of foot soldiers became evident, a greater proportion of cavalry was employed, and armies, though better equipped and disciplined, were less numerous. This we find in the early part of the fourteenth century. The main point for a state at war was to obtain a sufficient force of men-at-arms. As few Italian cities could muster a large body of cavalry from their own population, the obvious resource was

* Muratori, Antiq. Ital., Diss. 26. Denina, Rivoluzioni d'Italia, l. xii., c. 4.

† The carroccio was invented by Eribert, a celebrated archbishop of Milan, about 1039.—Anna di Murat., Antiq. Ital., Diss. 26. The carroccio of Milan was taken by Frederick II., in 1237, and sent to Rome. Parma and Cremona lost their carroccios to each other, and exchanged them some years afterward with great exultation. In the fourteenth century this custom had gone into disuse.—Id. ibid. Denina, l. xii., c. 4.

‡ Villani, l. vi., c. 79.

§ Sismondi, t. iii. p. 263, &c., has some judicious observations on this subject.

to hire mercenary troops. This had been practised in some instances much earlier. The city of Genoa took the Count of Savoy into pay with two hundred horse in 1235.* Florence retained five hundred French lances in 1282.† But it became much more general in the fourteenth century, chiefly after the expedition of the Emperor Henry VII., in 1310. Many German soldiers of fortune, remaining in Italy upon this occasion, engaged in the service of Milan, Florence, or some other state. The subsequent expeditions of Louis of Bavaria in 1326, and of John, king of Bohemia, in 1331, brought a fresh accession of adventurers from the same country. Others again came from France, and some from Hungary. All preferred to continue in the richest country and finest climate of Europe, where their services were anxiously solicited and abundantly repaid. An unfortunate prejudice in favour of strangers prevailed among the Italians of that age. They ceded to them, one knows not why, certainly without having been vanquished, the palm of military skill and valour. The word Transalpine (Oltramontani) is frequently applied to hired cavalry by the two Villani, as an epithet of excellence.

The experience of every fresh campaign now told more and more against the ordinary militia. It has been usual for modern writers to lament the degeneracy of martial spirit among the Italians of that age. But the contest was too unequal between an absolutely invulnerable body of cuirassiers, and an infantry of peasants or citizens. The bravest men have little appetite for receiving wounds and death without the hope of inflicting any in return. The parochial militia of France had proved equally unserviceable; though, as the life of a French peasant was of much less account in the eyes of his government than that of an Italian citizen, they were still led forward like sheep to the slaughter, against the disciplined forces of Edward III. The cavalry had about this time laid aside the hauberk, or coat of mail, their ancient distinction from the unprotected populace: which, though incapable of being cut through by the sabre, afforded no defence against the pointed sword introduced in the thirteenth century,* nor repelled the impulse of a lance, or the crushing blow of a battle axe. Plate armour was substituted in its place; and the man-at-arms, cased in entire steel, the several pieces firmly riveted, and proof against every stroke, his charger protected on the face, chest, and shoulders, or, as it was called, barded with plates of steel, fought with a security of success against enemies inferior perhaps only in these adventitious sources of courage to himself.†

Citizens exempted from service.

Nor was the new system of conducting hostilities less inconvenient to the citizens than the tactics of a battle. Instead of rapid and predatory invasions, terminated instantly by a single action, and not extending more than a few days' march from the soldier's home, the more skilful combinations usual in the fourteenth century frequently protracted an indecisive contest for a whole summer.‡ As wealth and civilization made evident the advantages of agricultural and mercantile industry, this loss of productive labour could no longer be endured. Azzo Visconti, who died in 1339, dispensed with the personal service of his Milanese subjects. "Another of his laws," says Galvaneo Fiamma, "was, that the people should not go to war, but remain at home for their own business. For they had hitherto been kept with much danger and expense every year, and especially in time of harvest and vintage, when princes are won to go to war, in besieging cities, and incurred numberless losses, and chiefly on account of the long time that they were so detained."◊ This law of Azzo Visconti, taken separately, might be ascribed to the usual policy of an absolute govern

* Muratori, Dissert. 26

† Ammirato, Istoria Fiorent., p. 159; the same was done in 1279, p. 200. A *lance*, in the technical language of those ages, included the lighter cavalry attached to the man-at-arms, as well as himself. In France, the full complement of a lance (lance fournie) was five or six horses; thus the 1500 lances, who composed the original companies of ordonnance raised by Charles VII., amounted to nine thousand cavalry. But in Italy, the number was smaller. We read frequently of barbuti, which are defined, lanze de due cavalli.—Corio, p. 437. Lances of three horses were introduced about the middle of the fourteenth century.—Id., p. 466.

* Muratori, ad ann. 1226.

† The earliest plate armour, engraved in Montfaucon's Monumens de la Monarchie Française, t. ii., is of the reign of Philip the Long, about 1315; but it does not appear generally till that of Philip of Valois, or even later. Before the complete harness of steel was adopted, plated caps were sometimes worn on the knees and elbows, and even greaves on the legs. This is represented in a statue of Charles I., king of Naples, who died in 1285. Possibly the statue may not be quite so ancient.—Montfaucon, passim. Daniel, Hist. de la Milice Françoise, p. 395.

‡ This tedious warfare *à la Fabius* is called by Villani guerra guereggiata, l. viii., c. 49; at least I can annex no other meaning to the expression.

◊ Muratori, Antiquit. Ital., Dissert. 26

ment. But we find a similar innovation not long afterward at Florence. In the war carried on by that republic against Giovanni Visconti, in 1351, the younger Villani informs us that "the useless and mischievous personal service of the inhabitants of the district was commuted into a money payment."* This change indeed was necessarily accompanied by a vast increase of taxation. The Italian states, republics as well as principalities, levied very heavy contributions. Mastino della Scala had a revenue of 700,000 florins; more, says John Villani, than the king of any European country, except France, possesses.† Yet this arose from only nine cities of Lombardy. Considered with reference to economy, almost any taxes must be a cheap commutation for personal service. But economy may be regarded too exclusively, and can never counterbalance that degradation of a national character which proceeds from intrusting the public defence to foreigners.

Companies of adventure.

It could hardly be expected that stipendiary troops, chiefly composed of Germans, would conduct themselves without insolence and contempt of the effeminacy which courted their services. Indifferent to the cause they supported, the highest pay and the richest plunder were their constant motives. As Italy was generally the theatre of war in some of her numerous states, a soldier of fortune, with his lance and charger for his inheritance, passed from one service to another without regret and without discredit. But if peace happened to be pretty universal, he might be thrown out of his only occupation, and reduced to a very inferior condition in a country of which he was not a native. It naturally occurred to men of their feelings, that if money and honour could only be had while they retained their arms, it was their own fault if they ever relinquished them. Upon this principle they first acted in 1343, when the republic of Pisa disbanded a large body of German cavalry which had been employed in a war with Florence.‡ A partisan, whom the Italians call the Duke Guarnieri, engaged these dissatisfied mercenaries to remain united under his command. His plan was to levy contributions on all countries which he entered with his company, without aiming at any conquests. No Italian army, he well knew, could be raised to oppose him, and he trusted that other mercenaries would not be ready to fight against men who had devised a scheme so advantageous to the profession. This was the first of the companies of adventure, which continued for many years to be the scourge and disgrace of Italy. Guarnieri, after some time, withdrew his troops, saturated with plunder, into Germany: but he served in the invasion of Naples by Louis, king of Hungary, in 1348, and, forming a new company, ravaged the ecclesiastical state. A still more formidable band of disciplined robbers appeared in 1353, under the command of Fra Moriale, and afterward of Conrad Lando This was denominated the Great Company, and consisted of several thousand regular troops, besides a multitude of half-armed ruffians, who assisted as spies, pioneers, and plunderers. The rich cities of Tuscany and Romagna paid large sums, that the great company, which was perpetually in motion, might not march through their territory. Florence alone magnanimously resolved not to suffer this ignominious tribute. Upon two occasions, once in 1358, and still more conspicuously the next year, she refused either to give a passage to the company or to redeem herself by money; and in each instance the German robbers were compelled to retire. At this time they consisted of five thousand cuirassiers, and their whole body was not less than twenty thousand men; a terrible proof of the evils which an erroneous system had entailed upon Italy. Nor were they repulsed on this occasion by the actual exertions of Florence. The courage of that republic was in her councils, not in her arms; the resistance made to Lando's demand was a burst of national feeling, and rather against the advice of the leading Florentines;* but the army employed was entirely composed of mercenary troops, and probably, for the greater part, of foreigners.

* Matt. Villani, p. 135.

† L. xi., c. 45. I cannot imagine why M. Sismondi asserts, t. iv., p. 432, that the lords of cities in Lombardy did not venture to augment the taxes imposed while they had been free. Complaints of heavy taxation are certainly often made against the Visconti and other tyrants in the fourteenth century.

‡ Sismondi, t. v., p. 380. The dangerous aspect which these German mercenaries might assume, had appeared four years before, when Lodrisio, one of the Visconti, having quarrelled with the Lord of Milan, led a large body of troops who had just been disbanded against the city. After some desperate battles, the mercenaries were defeated, and Lodrisio taken, t. v., p. 278. In this instance, however they acted for another; Guarnieri was the first who taught them to preserve the impartiality of generous robbers.

* Matt. Villani, p. 537.

Sir John Hawkwood.

None of the foreign partisans, who entered into the service of Italian states, acquired such renown in that career as an Englishman, whom contemporary writers call Aucud or Agutus, but to whom we may restore his national appellation of Sir John Hawkwood. This very eminent man had served in the war of Edward III., and obtained his knighthood from that sovereign, though originally, if we may trust common fame, bred to the trade of a tailor. After the peace of Bretigni, France was ravaged by the disbanded troops, whose devastations Edward was accused, perhaps unjustly, of secretly instigating. A large body of these, under the name of the White Company, passed into the service of the Marquis of Montferrat. They were some time afterward employed by the Pisans against Florence; and, during this latter war, Hawkwood appears as their commander. For thirty years he was continually engaged in the service of the Visconti, of the pope, or of the Florentines, to whom he devoted himself for the latter part of his life, with more fidelity and steadiness than he had shown in his first campaigns. The republic testified her gratitude by a public funeral, and by a monument, which, I believe, is still extant.

Want of military science before his time.

The name of Sir John Hawkwood is worthy to be remembered, as that of the first distinguished commander who had appeared in Europe since the destruction of the Roman empire. It would be absurd to suppose that any of the constituent elements of military genius which nature furnishes to energetic characters were wanting to the leaders of a barbarian or feudal army; untroubled perspicacity in confusion, firm decision, rapid execution, providence against attack, fertility of resource, and stratagem. These are in quality as much required from the chief of an Indian tribe as from the accomplished commander. But we do not find them in any instance so consummated by habitual skill as to challenge the name of generalship. No one at least occurs to me previously to the middle of the fourteenth century, to whom history has unequivocally assigned that character. It is very rarely that we find even the order of battle specially noticed. The monks, indeed, our only chroniclers, were poor judges of martial excellence; yet, as war is the main topic of all annals, we could hardly remain ignorant of any distinguished skill in its operations. This neglect of military science certainly did not proceed from any predilection for the arts of peace. It arose out of the general manners of society, and out of the nature and composition of armies in the middle ages. The insubordinate spirit of feudal tenants, and the emulous equality of chivalry, were alike hostile to that gradation of rank, that punctual observance of irksome duties, that prompt obedience to a supreme command, through which a single soul is infused into the active mass, and the rays of individual merit converge to the head of the general.

In the fourteenth century we begin to perceive something of a more scientific character in military proceedings, and historians for the first time discover that success does not entirely depend upon intrepidity and physical prowess. The victory of Muhldorf over the Austrian princes, in 1322, that decided a civil war in the empire, is ascribed to the ability of the Bavarian commander.* Many distinguished officers were formed in the school of Edward III. Yet their excellences were perhaps rather those of active partisans than of experienced generals. Their successes are still due rather to daring enthusiasm than to wary and calculating combination. Like inexpert chess-players, they surprise us by happy sallies against rule, or display their talents in rescuing themselves from the consequence of their own mistakes. Thus the admirable arrangements of the Black Prince at Poitiers hardly redeem the temerity which placed him in a situation where the egregious folly of his adversary alone could have permitted him to triumph. Hawkwood therefore appears to me the first real general of modern times; the earliest master, however imperfect, in the science of Turenne and Wellington. Every contemporary Italian historian speaks with admiration of his skilful tactics in battle, his stratagems, his well-conducted retreats. Praise of this description, as I have observed, is hardly bestowed, certainly not so continually, on any former captain.

School of Italian generals.

Hawkwood was not only the greatest, but the last of the foreign condottieri, or captains of mercenary bands. While he was yet living, a new military school had been formed in Italy, which not only superseded, but eclipsed all the strangers. This important reform was ascribed to Alberic di Barbiano, lord of some petty territories

* Struvius, Corpus Historiæ Germanicæ, p. 585. Schwepperman, the Bavarian general, is called by a contemporary writer, clarus militari scientiâ vir.

near Bologna. He formed a company altogether of Italians about the year 1379. It is not to be supposed that natives of Italy had before been absolutely excluded from service. We find several Italians, such as the Malatesta family, lords of Rimini, and the Rossi of Parma, commanding the armies of Florence much earlier. But this was the first trading company, if I may borrow the analogy, the first regular body of Italian mercenaries, attached only to their commander, without any consideration of party, like the Germans and English of Lando and Hawkwood. Alberic di Barbiano, though himself no doubt a man of military talents, is principally distinguished by the school of great generals which the company of St. George under his command produced, and which may be deduced, by regular succession, to the sixteenth century. The first in order of time, and immediate contemporaries of Barbiano, were Jacopo Verme, Facino Cane, and Ottobon Terzo. Among an intelligent and educated people, little inclined to servile imitation, the military art made great progress. The most eminent condottieri being divided, in general, between belligerants, each of them had his genius excited and kept in tension by that of a rival in glory. Every resource of science as well as experience, every improvement in tactical arrangements and the use of arms, was required to obtain an advantage over such equal enemies. In the first year of the fifteenth century, the Italians brought their newly-acquired superiority to a test. The Emperor Robert, in alliance with Florence, invaded Gian Galeazzo's dominions with a considerable army. From old reputation, which so frequently survives the intrinsic qualities upon which it was founded, an impression appears to have been excited in Italy that the native troops were still unequal to meet the charge of German cuirassiers. The Duke of Milan gave orders to his general, Jacopo Verme, to avoid a combat. But that able leader was aware of a great relative change in the two armies. The Germans had neglected to improve their discipline; their arms were less easily wielded, their horses less obedient to the bit. A single skirmish was enough to open their eyes; they found themselves decidedly inferior; and, having engaged in the war with the expectation of easy success, were readily disheartened.* This victory, or rather this decisive proof that victory might be achieved, set Italy at rest for almost a century from any apprehensions on the side of her ancient masters.

Whatever evils might be derived, and they were not trifling, from the employment of foreign or native mercenaries, it was impossible to discontinue the system without general consent; and too many states found their own advantage in it for such an agreement. The condottieri were indeed all notorious for contempt of engagements. Their rapacity was equal to their bad faith. Besides an enormous pay, for every private cuirassier received much more in value than a subaltern officer at present, they exacted gratifications for every success.* But every thing was endured by ambitious governments who wanted their aid. Florence and Venice were the two states which owed most to the companies of adventure. The one loved war without its perils; the other could never have obtained an inch of territory with a population of sailors. But they were both almost inexhaustibly rich by commercial industry; and, as the surest paymasters, were best served by those they employed. The Visconti might perhaps have extended their conquest over Lombardy with the militia of Milan; but without a Jacopo del Verme or a Carmagnola, the banner of St. Mark would never have floated at Verona and Bergamo.

The Italian armies of the fifteenth century have been remarked for one striking peculiarity. War has never been conducted at so little personal hazard to the soldier. Combats frequently occur in the annals of that age, wherein success, though warmly contested, cost very few lives even to the vanquished.† This innocence of blood,

Defensive arms of that age

* Sismondi, t. vii., p. 439.

* Paga doppia, e mese compiuto, of which we frequently read, sometimes granted improvidently, and more often demanded unreasonably. The first speaks for itself; the second was the reckoning a month's service as completed when it was begun, in calculating their pay.—Matt. Villani, p. 62. Sismondi, t. v., p. 412.

Gian Galeazzo Visconti promised constant half-pay to the condottieri whom he disbanded in 1396. This perhaps is the first instance of half-pay.— Sismondi, t. vii., p. 397.

† Instances of this are very frequent. Thus, at the action of Zagonara, in 1423, but three persons, according to Machiavel, lost their lives, and those by suffocation in the mud.—Ist. Fiorent., l. iv. At that of Molinella, in 1467, he says that no one was killed, l. vii. Ammirato reproves him for this, as all the authors of the time represent it to have been sanguinary (t. ii., p. 102), and insinuates that Machiavel ridicules the inoffensiveness of those armies more than it deserves, schernendo, come egli suol far, quella milizia. Certainly some few battles of the fifteenth century were not only obstinately . ou

which some historians turn into ridicule, was no doubt owing in a great degree to the rapacity of the companies of adventure, who, in expectation of enriching themselves by the ransom of prisoners, were anxious to save their lives. Much of the humanity of modern warfare was originally due to this motive. But it was rendered more practicable by the nature of their arms. For once, and for once only in the history of mankind, the art of defence had outstripped that of destruction. In a charge of lancers many fell, unhorsed by the shock, and might be suffocated or bruised to death by the pressure of their own armour; but the lance's point could not penetrate the breastplate, the sword fell harmless upon the helmet, the conqueror, in the first impulse of passion, could not assail any vital part of a prostrate but not exposed enemy. Still less was to be dreaded from the archers or crossbowmen, who composed a large part of the infantry. The bow, indeed, as drawn by an English foot-soldier, was the most formidable of arms before the invention of gunpowder. That ancient weapon, though not perhaps common among the Northern nations, nor for several centuries after their settlement, was occasionally in use before the crusades. William employed archers in the battle of Hastings.* Intercourse with the east, its natural soil, during the twelfth and thirteenth ages, rendered the bow better known. But the Europeans improved on the eastern method of confining its use to cavalry. By employing infantry as archers, they gained increased size, more steady position, and surer aim for the bow. Much, however, depended on the strength and skill of the archer. It was a peculiarly English weapon, and none of the other principal nations adopted it so generally or so successfully. The crossbow, which brought the strong and weak to a level, was more in favour upon the continent. This instrument is said by some writers to have been introduced after the first crusade, in the reign of Louis the Fat.* But, if we may trust William of Poitou, it was employed, as well as the long bow, at the battle of Hastings. Several of the popes prohibited it as a treacherous weapon; and the restriction was so far regarded that, in the time of Philip Augustus, its use is said to have been unknown in France.† By degrees it became more general; and crossbowmen were considered as a very necessary part of a well-organized army But both the arrow and the quarrel glanced away from plate-armour, such as it became in the fifteenth century, impervious in every point, except when the visor was raised from the face, or some part of the body accidentally exposed The horse indeed was less completely protected.

Many disadvantages attended the security against wounds for which this armour had been devised. The enormous weight exhausted the force and crippled the limbs. It rendered the heat of a southern climate insupportable. In some circumstances it increased the danger of death, as in the passage of a river or morass. It was impossible to compel an enemy to fight, because the least intrenchment or natural obstacle could stop such unwieldy assailants. The troops might be kept in constant alarm at night, and either compelled to sleep under arms, or run the risk of being surprised before they could rivet their plates of steel.‡ Neither the Italians, however, nor the Transalpines, would surrender a mode of defence which they ought to have deemed inglorious. But, in order to obviate some of its military inconveniences, as well as to give a concentration in attack, which lancers impetuously charging in a single line, according to the practice at least of France in the middle ages, did not preserve, it became usual for the cavalry to dismount, and leaving their horses at some distance, to combat on foot with the lance This practice, which must have been singularly embarrassing with the plate-armour of the fifteenth century, was introduced before it became so ponderous.

Custom of cavalry dismounting.

tested, but attended with considerable loss.—Sismondi, t. x., p. 126, 137. But, in general, the slaughter must appear very trifling. Ammirato himself says, that in an action between the Neapolitan and papal troops in 1486, which lasted all day, not only no one was killed, but it is not recorded that any one was wounded.—Roscoe's Lorenzo de' Medici, vol. ii., p. 37. Guicciardini's general testimony to the character of these combats is unequivocal. He speaks of the battle of Fornova, between the confederates of Lombardy and the army of Charles VIII. returning from Naples in 1495, as very remarkable on account of the slaughter, which amounted on the Italian side to 3000 men perchè fu la prima, che da lunghissimo tempo in quà si combattesse con uccisione e con sangue in Italia, perchè innanzi à questa morivano pochissimi uomini in un fatto d'arme, l. ii., p. 175.

* Pedites in fronte locavit, sagittis armatos et balistis, item pedites in ordine secundo firmiores et loricatos, ultimo turmas equitum.—Gul. Pictaviensis (in Du Chesne), p. 201. Several archers are represented in the tapestry of Bayeux

* Le Grand, Vie privée des Français, t. i., p. 349

† Du Cange, v. Balista. Muratori, Diss. 26, t. i., p. 462. (Ital.)

‡ Sismondi, t. ix., p. 158.

It is mentioned by historians of the twelfth century both as a German and an English custom.* We find it in the wars of Edward III. Hawkwood, the disciple of that school, introduced it into Italy.† And it was practised by the English in their second wars with France, especially at the battles of Crevant and Verneuil.‡

Meanwhile, a discovery accidentally made, perhaps in some remote age and distant region, and whose importance was but slowly perceived by Europe, had prepared the way not only for a change in her military system, but for political effects still more extensive. If we consider gunpowder as an instrument of human destruction, incalculably more powerful than any that skill had devised or accident presented before, acquiring, as experience shows us, a more sanguinary dominion in every succeeding age, and borrowing all the progressive resources of science and civilization for the extermination of mankind, we shall be appalled at the future prospects of the species, and feel perhaps in no other instance so much difficulty in reconciling the mysterious dispensation with the benevolent order of Providence. As the great security for established governments, the surest preservation against popular tumult, it assumes a more equivocal character, depending upon the solution of a doubtful problem, whether the sum of general happiness has lost more in the last three centuries through arbitrary power, than it has gained through regular police and suppression of disorder.

Invention of gunpowder

There seems little reason to doubt that gunpowder was introduced through the means of the Saracens into Europe. Its use in engines of war, though they may seem to have been rather like our fireworks than artillery, is mentioned by an Arabic writer in the Escurial collection about the year 1249.* It was known not long afterward to our philosopher, Roger Bacon, though he concealed in some degree the secret of its composition. In the first part of the fourteenth century, cannon, or rather mortars, were invented, and the applicability of gunpowder to purposes of war was understood. Edward III. employed some pieces of artillery with considerable effect at Crecy.† But its use was still not very frequent; a circumstance which will surprise us less, when we consider the unscientific construction of artillery; the slowness with which it could be loaded; its stone balls of uncertain aim and imperfect force, being commonly fired at a considerable elevation; and especially the difficulty of removing it from place to place during an action. In sieges, and in naval engagements, as for example in the war of Chioggia, it was more frequently employed.‡ Gradually, however, the new

* The Emperor Conrad's cavalry in the second crusade are said by William of Tyre to have dismounted on one occasion, and fought on foot, de equis descendentes, et facti pedites; *sicut mos est Teutonicis* in summis necessitatibus bellica tractare negotia, l. xvii., c. 4. And the same was done by the English in their engagement with the Scotch near North Allerton, commonly called the battle of the Standard, in 1138.—Twysden, Decem Script., p. 342.

† Sismondi, t. vi., p. 429. Azarius, in Script. Rer. Ital., t. xvi. Matt. Villani.

‡ Monstrelet, t. ii., fol. 7, 14, 76. Villaret, t. xvii., p. 89. It was a Burgundian as well as English fashion. Entre les Bourguignons, says Comines, lors estoient les plus honorez ceux que descendoient avec les archers. l. i., c. 3.

* Casiri, Bibl. Arab. Hispan., t. ii., p. 7, thus renders the original description of certain missiles used by the Moors. Serpunt, susurrantque scorpiones circumligati ac pulvere nitrato incensi, unde explosi fulgurant ac incendunt. Jam videre erat manganum excussum veluti nubem per aera extendi ac tonitrus instar horrendum edere fragorem, ignemque undequaque vomens, omnia dirumpere: incendere, in cineres redigere. The Arabic passage is at the bottom of the page; and one would be glad to know whether *pulvis nitratus* is a fair translation. But I think there can on the whole be no doubt that gunpowder is meant. Another Arabian writer seems to describe the use of cannon in the years 1312 and 1323.—Id. ibid. And the chronicle of Alphonso XI., king of Castile, distinctly mentions them at the siege of Algeziras in 1342. But, before this, they were sufficiently known in France. Gunpowder and cannon are both mentioned in registers of accounts under 1338 (Du Cange, Bombarda), and in another document of 1345.—Hist. du Languedoc, t. iv., p. 204. But the strongest evidence is a passage of Petrarch, written before 1344, and quoted in Muratori, Antich. Ital., Dissert. 26, p. 456, where he speaks of the art, nuper rara, nunc communis.

† G. Villani, l. xii., c. 67. Gibbon has thrown out a sort of objection to the certainty of this fact, on account of Froissart's silence. But the positive testimony of Villani, who died within two years afterward, and had manifestly obtained much information as to the great events passing in France cannot be rejected. He ascribes a material effect to the cannon of Edward, colpi delle bombarde, which I suspect, from his strong expressions, had not been employed before, except against stone walls. It seemed, he says, as if God thundered con grande uccisione di genti, e sfondamento di cavalli.

‡ Gattaro, Ist. Padovana, in Script. Rer. Ital. xvii., p. 360. Several proofs of the employmen of artillery in French sieges during the reign o Charles V. occur in Villaret. See the word Artillerie in the index.

Gian Galeazzo had, according to Coria, thirty four pieces of cannon, small and great, in the Milanese army, about 1317

artifice of war gained ground. The French made the principal improvements. They cast their cannon smaller, placed them on lighter carriages, and used balls of iron.* They invented portable arms for a single soldier, which, though clumsy in comparison with their present state, gave an augury of a prodigious revolution in the military art. John, duke of Burgundy, in 1411, had 1000 hand-cannons, as they were called, in his army.† They are found under different names, and modifications of form, for which I refer the reader to professed writers on tactics, in most of the wars that historians of the fifteenth century record, but less in Italy than beyond the Alps. The Milanese, in 1449, are said to have armed their militia with 20,000 muskets, which struck terror into the old generals.‡ But these muskets, supported on a rest, and charged with great delay, did less execution than our sanguinary science would require; and, uncombined with the admirable invention of the bayonet, could not in any degree resist a charge of cavalry. The pike had a greater tendency to subvert the military system of the middle ages, and to demonstrate the efficiency of disciplined infantry. Two free nations had already discomfited, by the help of such infantry, those arrogant knights on whom the fate of battles had depended; the Bohemians, instructed in the art of war by their great master, John Zisca; and the Swiss, who, after winning their independence, inch by inch, from the house of Austria, had lately established their renown by a splendid victory over Charles of Burgundy. Louis XI. took a body of mercenaries from the United Cantons into pay. Maximilian had recourse to the same assistance.§ And though the importance of infantry was not perhaps decidedly established till the Milanese wars of Louis XII. and Francis I. in the sixteenth century, yet the last years of the middle ages, according to our division, indicated the commencement of that military revolution in the general employment of pikemen and musketeers.

Soon after the beginning of the fifteenth century, to return from this digression, two illustrious captains, educated under Alberic di Barbiano, turned upon themselves the eyes of Italy. These were Braccio di Montone, a noble Perugian, and Sforza Attendolo, originally a peasant in the village of Cotignuola. Nearly equal in reputation, unless perhaps Braccio may be reckoned the more consummate general, they were divided by a long rivalry, which descended to the next generation, and involved all the distinguished leaders of Italy. The distractions of Naples, and the anarchy of the ecclesiastical state, gave scope not only to their military, but political ambition. Sforza was invested with extensive fiefs in the kingdom of Naples, and with the office of Great Constable. Braccio aimed at independent acquisitions, and formed a sort of principality around Perugia. This, however, was entirely dissipated at his death. When Sforza and Braccio were no more, their respective parties were headed by the son of the former, Francesco Sforza, and by Nicolas Piccinino, who for more than twenty years fought, with few exceptions, under opposite banners. Piccinino was constantly in the service of Milan. Sforza, whose political talents fully equalled his military skill, never lost sight of the splendid prospects that opened to his ambition. From Eugenius IV. he obtained the March of Ancona, as a fief of the Roman see. Thus rendered more independent than the ordinary condottieri, he mingled as a sovereign prince in the politics of Italy. He was generally in alliance with Venice and Florence, throwing his weight into their scale to preserve the balance of power against Milan and Naples. But his ultimate designs rested upon Milan. Filippo Maria, duke of that city, the last of his family, had only a natural daughter, whose hand he sometimes offered and sometimes withheld from Sforza. Even after he had consented to their union, his suspicious temper was incapable of admitting such a son-in-law into confidence, and he joined in a confederacy with the pope and King of Naples to strip Sforza of the March. At the death of Filippo Maria, in 1447, that general had nothing left but his glory, and a very disputable claim to the Milanese succession. This, however,

Rivalry of Sforza and Braccio.

Francesco Sforza.

He acquires the duchy of Milan.

* Guicciardini, l. i., p. 75, has a remarkable passage on the superiority of the French over the Italian artillery, in consequence of these improvements.

† Villaret, t. xiii., p. 176, 310.

‡ Sismondi, t. ix., p. 341. He says that it required a quarter of an hour to charge and fire a musket. I must confess that I very much doubt the fact of so many muskets having been collected. In 1432, that arm was seen for the first time in Tuscany.—Muratori, Dissert. 26. p. 457.

§ See Guicciardini's character of the Swiss troops, p. 192. The French, he says, had no native infantry; il regno di Francia era debolissimo di fanteria propria, tutte le nobilità monopolizing all warlike occupations.—Ibid.

er, was set aside by the citizens, who revived their republican government. A republic in that part of Lombardy might, with the help of Venice and Florence, have withstood any domestic or foreign usurpation. But Venice was hostile, and Florence indifferent. Sforza became the general of this new state, aware that such would be the probable means of becoming its master. No politician of that age scrupled any breach of faith for his interest. Nothing, says Machiavel, was thought shameful but to fail. Sforza with his army deserted to the Venetians; and the republic of Milan, being both incapable of defending itself, and distracted by civil dissensions, soon fell a prey to his ambition. In 1450 he was proclaimed duke, rather by right of election or of conquest than in virtue of his marriage with Bianca, whose sex, as well as illegitimacy, seemed to preclude her from inheriting.

Affairs of Naples.

I have not alluded for some time to the domestic history of a kingdom, which bore a considerable part during the fourteenth and fifteenth centuries in the general combinations of Italian policy, not wishing to interrupt the reader's attention by too frequent transitions. We must return again to a more remote age in order to take up the history of Naples. [A. D. 1272.] Charles of Anjou, after the deaths of Manfred and Conradin had left him without a competitor, might be ranked in the first class of European sovereigns. Master of Provence and Naples, and at the head of the Guelf faction in Italy, he had already prepared a formidable attack on the Greek empire, when a memorable revolution in Sicily brought humiliation on his latter years. John of Procida, a Neapolitan, whose patrimony had been confiscated for his adherence to the party of Manfred, retained, during long years of exile, an implacable resentment against the house of Anjou. From the dominions of Peter III., king of Aragon, who had bestowed estates upon him in Valencia, he kept his eye continually fixed on Naples and Sicily. The former held out no favourable prospects; the Ghibelin party had been entirely subdued, and the principal barons were of French extraction or inclinations. But the island was in a very different state. Unused to any strong government, it was now treated as a conquered country. A large party of French soldiers garrisoned the fortified towns, and the systematic oppression was aggravated by those insults upon women, which have always been characteristic of that people, and are most intolerable to an Italian temperament. John of Procida, travelling in disguise through the island, animated the barons with a hope of deliverance. In like disguise he repaired to the pope, Nicolas III., who was jealous of the new Neapolitan destiny, and obtained his sanction to the projected insurrection; to the court of Constantinople, from which he readily obtained money; and to the King of Aragon, who employed that money in fitting out an armament, that hovered upon the coast of Africa, under pretext of attacking the Moors. It is, however, difficult at this time to distinguish the effects of preconcerted conspiracy from those of casual resentment. Before the intrigues so skilfully conducted had taken effect, yet after they were ripe for development, an outrage, committed upon a lady at Palermo during a procession on the vigil of Easter, provoked the people to that terrible massacre of all the French in their island, which has obtained the name of Sicilian Vespers. [A. D. 1283.] Unpremeditated as such an eb ullition of popular fury must appear, it fell in, by the happiest coincidence, with the previous conspiracy. The King of Aragon's fleet was at hand; the Sicilians soon called in his assistance; he sailed to Palermo, and accepted the crown. John of Procida is a remarkable witness to a truth which the pride of governments will seldom permit them to acknowledge; that an individual, obscure and apparently insignificant, may sometimes, by perseverance and energy, shake the foundations of established states; while the perfect concealment of his intrigues proves also, against a popular maxim, that a political secret may be preserved by a number of persons during a consid erable length of time.*

Rebellion of Sicily from Charles of Anjou.

Sicilian Vespers

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* Giannone, though he has well described the schemes of John of Procida, yet, as is too often his custom, or rather that of Costanzo, whom he implicitly follows, drops or slides over leading facts, and thus, omitting entirely, or misrepresenting the circumstances of the Sicilian Vespers, treats the whole insurrection as the result of a deliberate conspiracy. On the other hand, Nicolas Specialis, a contemporary writer, in the seventh volume of Muratori's collection, represents the Sicilian Vespers as proceeding entirely from the casual outrage in the streets of Palermo. The thought of calling in Peter, he asserts, did not occur to the Sicilians till Charles had actually commenced the siege of Messina. But this is equally removed from the truth. Gibbon has made more errors than are usual with so accurate an historian in his account of this revolution, such as calling Constance, the queen of Peter, *sister* instead of *daughter* of Manfred

War in consequence between France and Aragon.

The long war that ensued upon this revolution involved or interested the greater part of civilized Europe. Philip III. of France adhered to his uncle, and the King of Aragon was compelled to fight for Sicily within his native dominions. This indeed was the more vulnerable point of attack. Upon the sea he was lord of the ascendant. His Catalans, the most intrepid of Mediterranean sailors, were led to victory by a Calabrian refugee, Roger di Loria, the most illustrious and successful admiral whom Europe produced till the age of Blake and De Ruyter. In one of Loria's battles, the eldest son of the King of Naples was made prisoner, and the first years of his own reign were spent in confinement. But notwithstanding these advantages, it was found impracticable for Aragon to contend against the arms of France, and latterly of Castile, sustained by the rolling thunders of the Vatican. Peter III. had bequeathed Sicily to his second son James; Alfonso, the eldest, king of Aragon, could not fairly be expected to ruin his inheritance for his brother's cause; nor were the barons of that free country disposed to carry on a war without national objects. He made peace accordingly in 1295, and engaged to withdraw all his subjects from the Sicilian service. Upon his own death, which followed very soon, James succeeded to the kingdom of Aragon, and ratified the renunciation of Sicily. But the natives of that island had received too deeply the spirit of independence to be thus assigned over by the letter of a treaty. After solemnly abjuring, by their ambassadors, their allegiance to the King of Aragon, they placed the crown upon the head of his brother Frederick. They maintained the war against Charles II. of Naples, against James of Aragon, their former king, who had bound himself to enforce their submission, and even against the great Roger di Loria, who, upon some discontent with Frederick, deserted their banner, and entered into the Neapolitan service. Peace was at length made in 1300, upon condition that Frederick should retain during his life the kingdom, which was afterward to revert to the crown of Naples; a condition not likely to be fulfilled.

Upon the death of Charles II. king of Naples, in 1305, a question arose as to the succession. His eldest son, Charles Martel, had been called by maternal inheritance to the throne of Hungary, and had left at his decease a son, Carobert, the reigning sovereign of that country. According to the laws of representative succession, which were at this time tolerably settled in private inheritance, the crown of Naples ought to have regularly devolved upon that prince. But it was contested by his uncle Robert, the eldest living son of Charles II., and the cause was pleaded by civilians before Pope Clement V. at Avignon, the feudal superior of the Neapolitan kingdom. Reasons of public utility, rather than of legal analogy, seem to have prevailed in the decision which was made in favour of Robert.* The course of his reign evinced the wisdom of this determination. Robert, a wise and active, though not personally a martial prince, maintained the ascendency of the Guelf faction, and the papal influence connected with it, against the formidable combination of Ghibelin usurpers in Lombardy, and the two emperors Henry VII. and Louis of Bavaria. No male issue survived Robert, whose crown descended to his grand-daughter Joanna. She had been espoused, while a child, to her cousin Andrew, son of Carobert, king of Hungary, who was educated with her in the court of Naples. Auspiciously contrived as this union might seem to silence a subsisting claim upon the kingdom, it proved eventually the source of civil war and calamity for a hundred and fifty years. Andrew's manners were barbarous, more worthy of his native country than of that polished court wherein he had been bred. He gave himself up to the society of Hungarians, who taught him to believe that a matrimonial crown and derivative royalty were derogatory to a prince who claimed by a paramount hereditary right. [A. D. 1343.] In fact, he was pressing the court of Avignon to permit his own coronation, which would have placed in a very hazardous condition the rights of the queen, with whom he was living on ill terms, when one night he was seized, strangled, and thrown out of a window. Public rumour, in the absence of notorious proof, imputed the guilt of this mysterious assassination to Joanna. Whether historians are authorized to assume her participation in it so confidently as they have generally done, may perhaps be doubted; though I cannot venture positively to rescind their sentence. The circumstances of Andrew's death were

Robert, king of Naples.

Joanna. Murder of her husband Andrew.

A good narrative of the Sicilian Vespers may be found in Velly's History of France, t. vi.

* Giannone, l. xxii. Summonte, t. ii., p. 370 Some of the civilians of that age, however, approved the decision

undoubtedly pregnant with strong suspicion.* Louis, king of Hungary, his brother, a just and stern prince, invaded Naples, partly as an avenger, partly as a conqueror. The queen, and her second husband, Louis of Tarento, fled to Provence, where her acquittal, after a solemn, if not an impartial, investigation, was pronounced by Clement VI. Louis meanwhile found it more difficult to retain than to acquire the kingdom of Naples; his own dominion required his presence; and Joanna soon recovered her crown. She reigned for thirty years more without the attack of any enemy, but not intermeddling, like her progenitors, in the general concerns of Italy. Childless by four husbands, the succession of Joanna began to excite ambitious speculations. Of all the male descendants of Charles I., none remained but the King of Hungary, and Charles, duke of Durazzo, who had married the queen's niece, and was regarded by her as the presumptive heir to the crown. But, offended by her marriage with Otho of Brunswick, he procured the assistance of an Hungarian army to invade the kingdom, and, getting the queen into his power, took possession of the throne. In this enterprise he was seconded by Urban VI., against whom Joanna had unfortunately declared in the great schism of the church. She was smothered with a pillow, in prison, by the order of Charles. [A. D. 1378.] The name of Joan of Naples has suffered by the lax repetition of calumnies. Whatever share she may have had in her husband's death, and certainly under circumstances of extenuation, her subsequent life was not open to any flagrant reproach. The charge of dissolute manners, so frequently made, is not warranted by any specific proof or contemporary testimony.

In the extremity of Joanna's distress, she had sought assistance from a quarter too remote to afford it in time for her relief. She adopted Louis, duke of Anjou, eldest uncle of the young king of France, Charles VI., as her heir in the kingdom of Naples and county of Provence. This bequest took effect without difficulty in the latter country. Naples was entirely in the possession of Charles of Durazzo. Louis, however, entered Italy with a very large army, consisting at least of 30,000 cavalry, and, according to some writers, more than double that number.* He was joined by many Neapolitan barons attached to the late queen. But, by a fate not unusual in so imperfect a state of military science, this armament produced no adequate effect, and mouldered away through disease and want of provisions. Louis himself dying not long afterward, the government of Charles III. appeared secure, and he was tempted to accept an offer of the crown of Hungary. This enterprise, equally unjust and injudicious, terminated in his assassination. Ladislaus, his son, a child ten years old, succeeded to the throne of Naples, under the guardianship of his mother Margaret; whose exactions of money producing discontent, the party which had supported the late Duke of Anjou became powerful enough to call in his son. Louis II., as he was called, reigned at Naples, and possessed most part of the kingdom for several years; the young king Ladislaus, who retained some of the northern provinces, fixing his residence at Gaeta. If Louis had prosecuted the war with activity, it seems probable that he would have subdued his adversary. But his character was not very energetic; and Ladislaus as he advanced to manhood, displaying much superior qualities, gained ground by degrees, till the Angevin barons, perceiving the turn of the tide, came over to his banner, and he recovered his whole dominions.

House of Anjou.

* The Chronicle of Dominic di Gravina (Script. Rer Ital., t. xii.) seems to be our best testimony for the circumstances connected with Andrew's death; and, after reading his narrative more than once, I find myself undecided as to this perplexed and mysterious story. Gravina's opinion, it should be observed, is extremely hostile to the queen. Nevertheless, there are not wanting presumptions, that Charles, first duke of Durazzo, who had married his sister, was concerned in the murder of Andrew, for which in fact he was afterward put to death by the King of Hungary. But, if the Duke of Durazzo was guilty, it is unlikely that Joanna should be so too; because she was on very bad terms with him, and indeed the chief proofs against her are founded on the investigation which Durazzo himself professed to institute. Confessions obtained through torture are as little credible in history as they ought to be in judicature; even if we could be positively sure, which is not the case in this instance, that such confessions were ever made. However, I do not pretend to acquit Joanna, but merely to notice the uncertainty that rests over her story, on account of the positiveness with which all historians, except those of Naples and the Abbé de Sade, whose vindication (Vie de Pétrarque, t. ii., notes) does her more harm than good, have assumed the murder of Andrew to have been her own act, as if she had ordered his execution in open day.

Those who believe in the innocence of Mary, queen of Scots, may, besides the obvious resemblance in their stories, which has been often noticed, find a more particular parallel between this Duke of Durazzo and the Earl of Murray.

* Muratori. Summonte. Costanzo

The kingdom of Naples, at the close of the fourteenth century, was still altogether a feudal government. This had been introduced by the first Norman kings, and the system had rather been strengthened than impaired under the Angevin line. The princes of the blood, who were at one time numerous, obtained extensive domains by way of appanage. The principality of Tarento was a large portion of the kingdom.* The rest was occupied by some great families, whose strength, as well as pride, was shown in the number of men-at-arms whom they could muster under their banner. At the coronation of Louis II., in 1390, the Sanseverini appeared with 1800 cavalry completely equipped.† This illustrious house, which had filled all the high offices of state, and changed kings at its pleasure, was crushed by Ladislaus, whose bold and unrelenting spirit well fitted him to bruise the heads of the aristocratic hydra. After thoroughly establishing his government at home, this ambitious monarch directed his powerful resources towards foreign conquests. The ecclesiastical territories had never been secure from rebellion or usurpation; but legitimate sovereigns had hitherto respected the patrimony of the head of the church. It was reserved for Ladislaus, a feudal vassal of the Holy See, to seize upon Rome itself as his spoil. For several years, while the disordered state of the church, in consequence of the schism and the means taken to extinguish it, gave him an opportunity, the King of Naples occupied great part of the papal territories. He was disposed to have carried his arms farther north, and attacked the republic of Florence, if not the states of Lombardy, when his death relieved Italy from the danger of this new tyranny.

Ladislaus.

An elder sister, Joanna II., reigned at Naples after Ladislaus. Under this queen, destitute of courage and understanding, and the slave of appetites which her age rendered doubly disgraceful, the kingdom relapsed into that state of anarchy from which its late sovereign had rescued it. I shall only refer the reader to more enlarged histories for the first years of Joanna's reign. In 1421 the two most powerful individuals were Sforza Attendolo, great constable, and Sir Gianni Caraccioli the queen's minion, who governed the palace with unlimited sway. Sforza, aware that the favourite was contriving his ruin, and remembering the prison in which he had lain more than once since the accession of Joanna, determined to anticipate his enemies by calling a pretender to the crown, another Louis of Anjou, third in descent of that unsuccessful dynasty. The Angevin party, though proscribed and oppressed, was not extinct; and the populace of Naples, in particular, had always been on that side. Caraccioli's influence and the queen's dishonourable weakness rendered the nobility disaffected. Louis III. therefore had no remote prospect of success. But Caraccioli was more prudent than favourites, selected from such motives, have usually proved Joanna was old and childless; the reversion to her dominions was a valuable object to any prince in Europe. None was so competent to assist her, or so likely to be influenced by the hope of succession, as Alfonso, king of Aragon and Sicily. That island, after the reign of its deliverer, Frederick I., had unfortunately devolved upon weak or infant princes. One great family, the Chiaramonti, had possessed itself of half Sicily: not by a feudal title, as in other kingdoms, but as a kind of counter-sovereignty, in opposition to the crown, though affecting rather to bear arms against the advisers of their kings than against themselves. The marriage of Maria, queen of Sicily, with Martin, son of the King of Aragon, put an end to the national independence of her country. Dying without issue, she left the crown to her husband. This was consonant perhaps to the received law of some European kingdoms. But, upon the death of Martin, in 1409, his father, also named Martin, king of Aragon, took possession, as heir to his son, without any election by the Sicilian parliament. The Chiaramonti had been destroyed by the younger Martin, and no party remained to make opposition. Thus was Sicily united to the crown of Aragon. Alfonso, who now enjoyed those two crowns, gladly embraced the proposals of the Queen of Naples. They were founded indeed on the most substantial basis, mutual interest. She adopted Alfonso as her son and successor, while he bound himself

Joanna II.

Adoption of Alfonso by Aragon.

Affairs of Sicily

* It comprehended the provinces now called Terra d'Otranto and Terra di Bari, besides part of those adjoining.—Summonte, Istoria di Napoli, t. iii., p. 537. Orsini, prince of Tarento, who died in 1463, had 4000 troops in arms, and the value of 1,000,000 florins in moveables.—Sismondi, t. x., p. 151

† Summonte, t. iii., p. 417. Giannone l. xxiv., c. 4.

...employ his forces in delivering a kingdom that was to become his own. Louis of Anjou, though acknowledged in several provinces, was chiefly to depend upon the army of Sforza; and an army of Italian mercenaries could only be kept by means which he was not able to apply. The King of Aragon, therefore, had far the better prospects in the war, when one of the many revolutions of this reign defeated his immediate expectations. Whether it was that Alfonso's noble and affable nature afforded a contrast which Joanna was afraid of exhibiting to the people, or that he had really formed a plan to anticipate his succession to the throne, she became more and more distrustful of her adopted son; till, an open rupture having taken place, she entered into a treaty with her hereditary competitor, Louis of Anjou, and, revoking the adoption of Alfonso, substituted the French prince in his room. The King of Aragon was disappointed by this unforeseen stroke, which, uniting the Angevin faction with that of the reigning family, made it impracticable for him to maintain his ground for any length of time in the kingdom. Joanna reigned for more than ten years without experiencing any inquietude from the pacific spirit of Louis, who, content with his reversionary hopes, lived as a sort of exile in Calabria.* Upon his death, the queen, who did not long survive him, settled the kingdom on his brother Regnier. The Neapolitans were generally disposed to execute this bequest. But Regnier was unluckily at that time a prisoner to the Duke of Burgundy; and though his wife maintained the cause with great spirit, it was difficult for her, or even for himself, to contend against the King of Aragon, who immediately laid claim to the kingdom. After a contest of several years, Regnier, having experienced the treacherous and selfish abandonment of his friends, yielded the game to his adversary; and Alfonso founded the Aragonese line of sovereigns at Naples, deriving pretensions more splendid than just from Manfred, from the house of Swabia, and from Roger Guiscard.*

His revocation in favour of Louis of Anjou.

In the first year of Alfonso's Neapolitan war, he was defeated and taken prisoner by a fleet of the Genoese, who, as constant enemies of the Catalans in all the naval warfare of the Mediterranean, had willingly lent their aid to the Angevin party. Genoa was at this time subject to Filippo Maria, duke of Milan; and her royal captive was transmitted to his court. But here the brilliant graces of Alfonso's character won over his conqueror, who had no reason to consider the war as his own concern. The king persuaded him, on the contrary, that a strict alliance with an Aragonese dynasty in Naples against the pretensions of any French claimant, would be the true policy and best security of Milan. That city, which he had entered as a prisoner, he left as a friend and ally. From this time Filippo Maria Visconti and Alfonso were firmly united in their Italian politics, and formed one weight of the balance, which the republics of Venice and Florence kept in equipoise. After the succession of Sforza to the dutchy of Milan, the same alliance was generally preserved. Sforza had still more powerful reasons than his predecessor for excluding the French from Italy, his own title being contested by the Duke of Orleans, who derived a claim from his mother Valentine, a daughter of Gian Galeazzo Visconti. But the two republics were no longer disposed towards war. Florence had spent a great deal without any advantage in her contest with Filippo Maria;† and the new Duke

Alfonso king of Naples.

His connexion with Milan.

* Joanna's great favourite, Caraccioli, fell a victim some time before his mistress's death to an intrigue of the palace; the Dutchess of Sessia, a new favourite, having prevailed on the feeble old queen to permit him to be assassinated. About this time Alfonso had every reason to hope for the renewal of the settlement in his favour. Caraccioli had himself opened a negotiation with the King of Aragon; and, after his death, the Dutchess of Sessia embarked in the same cause. Joan even revoked secretly the adoption of the Duke of Anjou. This circumstance might appear doubtful; but the historian to whom I refer has published the act of revocation itself, which bears date April 11th, 1433. Zurita (Anales de Aragon, t. iv., p. 217) admits that no other writer, either contemporary or subsequent, has mentioned any part of the transaction, which must have been kept very secret; but his authority is so respectable, that I thought it worth notice, however uninteresting these remote intrigues may appear to most readers. Joanna soon changed her mind again, and ... short steps in favour of Alfonso.

* According to a treaty between Frederick III., king of Sicily, and Joanna I., of Naples, in 1363, the former monarch was to assume the title of King of Trinacria, leaving the original style to the Neapolitan line. But neither he, nor his successors in the island, ever complied with this condition, or entitled themselves otherwise than kings of Sicily ultrà Pharum, in contradistinction to the other kingdom, which they denominated, Sicily citrà Pharum. Alfonso of Aragon, when he united both these, was the first who took the title King of the two Sicilies, which his successors have retained ever since.—Giannone, t. iii., p. 234.

† The ... ding with the peace of Ferrara

of Milan had been the constant personal friend of Cosmo de' Medici, who altogether influenced that republic. At Venice, indeed, he had been regarded with very different sentiments; the senate had prolonged their war against Milan with redoubled animosity after his elevation, deeming him a not less ambitious and more formidable neighbour than the Visconti. But they were deceived in the character of Sforza. Conscious that he had reached an eminence beyond his early hopes, he had no care but to secure for his family the possession of Milan, without disturbing the balance of Lombardy. No one better knew than Sforza the faithless temper and destructive politics of the condottieri, whose interest was placed in the oscillations of interminable war, and whose defection might shake the stability of any government. Without peace it was impossible to break that ruinous system, and accustom states to rely upon their natural resources. Venice had little reason to expect further conquests in Lombardy: and if her ambition had inspired the hope of them, she was summoned by a stronger call, that of self-preservation, to defend her numerous and dispersed possessions in the Levant, against the arms of Mahomet II. All Italy indeed felt the peril that impended from that side: and these various motions occasioned a quadruple league in 1455, between the King of Naples, the Duke of Milan, and the two republics, for the preservation of peace in Italy. One object of this alliance, and the prevailing object with Alfonso, was the implied guarantee of his succession in the kingdom of Naples to his illegitimate son, Ferdinand. He had no lawful issue; and there seemed no reason why an acquisition of his own valour should pass against his will to collateral heirs. The pope, as feudal superior of the kingdom, and the Neapolitan parliament, the sole competent tribunal, confirmed the inheritance of Ferdinand.* Whatever may be thought of the claims subsisting in the house of Anjou, there can be no question that the reigning family of Aragon were legitimately excluded from that throne, though force and treachery enabled them ultimately to obtain it.

Quadruple league of 1455.

Alfonso, surnamed the Magnanimous, was by far the most accomplished sovereign whom the fifteenth century produced. The virtues of chivalry were combined in him with the patronage of letters, and with more than their patronage, a real enthusiasm for learning, seldom found in a king and especially in one so active and ambitious.* This devotion to literature was, among the Italians of that age, almost as sure a passport to general admiration as his more chivalrous perfection. Magnificence in architecture, and the pageantry of a splendid court, gave fresh lustre to his reign. The Neapolitans perceived with grateful pride that he lived almost entirely among them, in preference to his patrimonial kingdom; and forgave the heavy taxes, which faults nearly allied to his virtues, profuseness and ambition, compelled him to impose.† But they remarked a very different character in his son. Ferdinand was as dark and vindictive as his father was affable and generous. The barons, who had many opportunities of ascertaining his disposition, began, immediately upon Alfonso's death, to cabal against his succession, turning their eyes first to the legitimate branch of the family [A. D. 1461], and, on finding that prospect not favourable, to John, titular duke of Calabria, son of Regnier of Anjou, who survived to protest against the revolution that had dethroned him. John was easily prevailed upon to undertake an invasion of Naples. Notwithstanding the treaty concluded in 1455, Florence assisted him with money, and Venice at least with her wishes; but Sforza remained unshaken in that alliance with Ferdinand, which his clear-sighted policy discerned to be the best safeguard for his own dynasty. A large proportion of the Neapolitan nobility, including Orsini, prince of Tarento, the most powerful vassal of the crown, raised the banner of Anjou, which was sustained also by the youngest Piccinino, the last of the great condottieri, under whose command the veterans of former warfare rejoiced to serve. But John underwent the fate that had always attended his family in their long competition for that throne. After some brilliant successes, his want of resources, aggravated by the defection of Genoa, on whose ancient enmity to the house of Aragon he had relied, was perceived by the barons of his party, who, according to the practice of their ancestors, returned one by

Character of Alfonso

Ferdinand.

in 1428, is said to have cost the republic of Florence 3,500,000 florins.—Ammirato, p. 1043.

* Giannone, l. xxvi., c. 2.

* A story is told, true or false, that his delight in hearing Quintus Curtius read, without any other medicine, cured the king of an illness. See other proofs of his love of letters in Tiraboschi, [illegible] p. 40.

† Giannone, l. xxvi

one to the allegiance of Ferdinand. [A. D. 1464.]

The peace of Italy was little disturbed, except by a few domestic revolutions, for several years after this Neapolitan war.* Even the most short-sighted politicians were sometimes withdrawn from selfish objects by the appalling progress of the Turks, though there was not energy enough in their councils to form any concerted plans for their own security. Venice maintained a long, but ultimately an unsuccessful contest with Mahomet II. for her maritime acquisitions in Greece and Albania; and it was not till after his death relieved Italy from its immediate terror that the ambitious republic endeavoured to extend its territories by encroaching on the house of Este. [A. D. 1482.] Nor had Milan shown much disposition towards aggrandizement. Francesco Sforza had been succeeded, such is the condition of despotic governments, by his son Galeazzo, a tyrant more execrable than the worst of the Visconti. His extreme cruelties, and the insolence of a debauchery that gloried in the public dishonour of families, excited a few daring spirits to assassinate him. [A. D. 1476.] The Milanese profited by a tyrannicide, the perpetrators of which they had not courage or gratitude to protect. The regency of Bonne of Savoy, mother of the infant duke, Gian Galeazzo, deserved the praise of wisdom and moderation. [A. D. 1480.] But it was overthrown in a few years by Ludovico Sforza, surnamed the Moor, her husband's brother; who, while he proclaimed his nephew's majority, and affected to treat him as a sovereign, hardly disguised in his conduct towards foreign states that he had usurped for himself the sole direction of government.

State of Italy in the latter part of the fifteenth century.

The annals of one of the few surviving republics, that of Genoa, present to us, during the fifteenth as well as the preceding century, an unceasing series of revolutions, the shortest enumeration of which would occupy several pages. Torn by the factions of Adorni and Fregosi, equal and eternal rivals, to whom the old patrician families of Doria and Fieschi were content to become secondary, sometimes sinking from weariness of civil tumult into the grasp of Milan or France, and again, from impatience of foreign subjection, starting back from servitude to anarchy, the Genoa of those ages exhibits a singular contrast to the calm and regular aristocracy of the last three centuries. The latest revolution within the compass of this work was in 1488, when the Duke of Milan became sovereign, an Adorno holding the office of doge as his lieutenant.

Affairs of Genoa in that age.

Florence, the most illustrious and fortunate of Italian republics, was now rapidly descending from her rank among free commonwealths, though surrounded with more than usual lustre in the eyes of Europe. We must take up the story of that city from the revolution of 1382, which restored the ancient Guelf aristocracy, or party of the Albizi, to the ascendency of which a popular insurrection had stripped them. Fifty years elapsed during which this

Affairs of Florence.

* The following distribution of a tax of 458,000 florins, imposed, or rather proposed, in 1464, to defray the expense of a general war against the Turks, will give a notion of the relative wealth and resources of the Italian powers; but it is probable that the pope rated himself above his fair contingent. He was to pay 100,000 florins; the Venetians 100,000; Ferdinand of Naples 80,000; the Duke of Milan 70,000; Florence 50,000; the Duke of Modena 20,000; Siena 15,000; the Marquis of Mantua 10,000; Lucca 8000; the Marquis of Montferrat 5000.—Sismondi, t. x., p. 229. A similar assessment occurs, p. 307, where the proportions are not quite the same.

Perhaps it may be worth while to extract an estimate of the force of all Christian powers, written about 1454, from Sanuto's Lives of the Doges of Venice, p. 963. Some parts, however, appear very questionable. The King of France, it is said, can raise 30,000 men-at-arms; but for any foreign enterprise, only 15,000. The King of England can do the same. These powers are exactly equal; otherwise one of the two would be destroyed. The King of Scotland, "ch'è signore di grandi paesi e popoli con grande povertà," can raise 10,000 men-at-arms: The King of Norway the same: The King of Spain (Castile) 30,000: The King of Portugal 6000: The Duke of Savoy 8000: The Duke of Milan 10,000. The republic of Venice can pay from her revenues 10,000: That of Florence 4000; The pope 6000. The emperor and empire can raise 60,000: The King of Hungary 80,000 (not men-at-arms, certainly).

The King of France, in 1414, had 2,000,000 ducats of revenue; but now only half. The King of England had then as much; now only 700,000. The King of Spain's revenue also is reduced by the wars from 3,000,000 to 800,000. The Duke of Burgundy had 3,000,000; now 900,000. The Duke of Milan has sunk from 1,000,000 to 500,000; Venice from 1,109,000, which she possessed in 1423, to 800,000: Florence from 400,000 to 200,000.

These statistical calculations are chiefly remarkable, as they manifest that comprehensive spirit of creating all the powers of Europe as parts of a common system, which began to actuate the Italians of the fifteenth century. Of these enlarged views of policy the writings of Æneas Sylvius afford an eminent instance. Besides the more general and insensible causes, the increase of navigation and revival of literature, this may be ascribed to the continual danger from the progress of the Ottoman arms, which led the politicians of that part of Europe most exposed to them into more extensive views as to the resources and dispositions of Christian states.

party retained the government in its own hands with few attempts at disturbance. Their principal adversaries had been exiled, according to the invariable and perhaps necessary custom of a republic; the populace and inferior artisans were dispirited by their ill success. Compared with the leaders of other factions, Maso degl' Albizi and Nicola di Uzzano, who succeeded him in the management of his party, were attached to a constitutional liberty. Yet so difficult is it for any government, which does not rest on a broad basis of public consent, to avoid injustice, that they twice deemed it necessary to violate the ancient constitution. In 1393, after a partial movement in behalf of the vanquished faction, they assembled a parliament, and established what was technically called at Florence a Balia.* This was a temporary delegation of sovereignty to a number, generally a considerable number, of citizens, who, during the period of their dictatorship, named the magistrates, instead of drawing them by lot, and banished suspected individuals. A precedent so dangerous was eventually fatal to themselves, and to the freedom of their country. Besides this temporary balia, the regular scrutinies periodically made in order to replenish the bags, out of which the names of all magistrates were drwan by lot, according to the constitution established in 1328, were so managed as to exclude all persons disaffected to the dominant faction. But, for still greater security, a council of two hundred was formed, in 1411, out of those alone who had enjoyed some of the higher offices within the last thirty years, the period of the aristocratical ascendency, through which every proposition was to pass before it could be submitted to the two legislative councils.† These precautions indicate a government conscious of public enmity; and if the Albizi had continued to sway the republic of Florence, their jealousy of the people would have suggested still more innovations, till the constitution had acquired, in legal form as well as substance, an absolutely aristocratical character.

But, while crushing with deliberate severity their avowed adversaries, the ruling party had left one family, whose prudence gave no reasonable excuse for persecuting them; and whose popularity, as well as wealth, rendered the experiment hazardous. The Medici were among the most considerable of the new, or plebeian nobility. From the first years of the fourteenth century, their name not very unfrequently occurs in the domestic and military annals of Florence.* Salvestro de' Medici, who had been partially implicated in the democratical revolution that lasted from 1378 to 1382, escaped proscription on the revival of the Guelf party, though some of his family were afterward banished. Throughout the long depression of the popular faction, the house of Medici was always regarded as their consolation and their hope. That house was now represented by Giovanni,† whose immense wealth, honourably acquired by commercial dealings, which had already rendered the name celebrated in Europe, was expended with liberality and magnificence. Of a mild temper, and averse to cabals, Giovanni de' Medici did not attempt to set up a party, and contented himself with repressing some fresh encroachments on the popular part of the constitution, which the Albizi were disposed to make.‡ They, in their turn, freely admitted him to that share in public councils to which he was entitled by his eminence and virtues; a proof that the spirit of their administration was not illiberally exclusive. But on the death of Giovanni, his son Cosmo de' Medici, inheriting his father's riches and estimation, with more talents and more ambition, thought it time to avail himself of the popularity belonging to his name. By extensive connexions with the most eminent men in Italy, especially with Sforza, he came to be considered as the first citizen of Florence. The oligarchy were more than ever unpopular. Their administration, since 1382, had indeed been in general eminently successful; the acquisition of Pisa, and of other Tuscan cities, had aggrandized the republic, while from the port of Leghorn her ships had begun to trade with Alexandria, and sometimes to contend with the Genoese.§

Rise of the Medici.

* Ammirato, p. 840

† Id., p. 961.

* The Medici are enumerated by Villani among the chiefs of the Black faction in 1304, l. viii., c. 71. One of that family was beheaded by order of the Duke of Athens in 1343, l. xii., c. 2. It is singular that Mr. Roscoe should refer their first appearance in history, as he seems to do, to the siege of Scarperi, in 1351.

† Giovanni was not nearly related to Salvestro de' Medici. Their families are said per lungo trat to allontanarsi.—Ammirato, p. 992. Nevertheless, his being drawn gonfalonier, in 1421, created a great sensation in the city, and prepared the way to the subsequent revolution.—Ibid. Machiavelli, l. iv.

‡ Machiavelli, Istoria Fiorent., l. iv.

§ The Florentines sent their first merchant ship to Alexandria in 1422, with great and anxious hopes. Prayers were ordered for the success of

But an unprosperous war with Lucca diminished a reputation which was never sustained by public affection. Cosmo and his friends aggravated the errors of the government, which, having lost its wise and temperate leader, Nicola di Uzzano, had fallen into the rasher hands of Rinaldo degl' Albizi. He incurred the blame of being the first aggressor in a struggle which had become inevitable. [A. D. 1433.] Cosmo was arrested by command of a gonfalonier devoted to the Albizi, and condemned to banishment. But the oligarchy had done too much or too little. The city was full of his friends; the honours conferred upon him in his exile attested the sentiments of Italy. Next year he was recalled in triumph to Florence, and the Albizi were completely overthrown.

It is vain to expect, that a victorious faction will scruple to retaliate upon its enemies a still greater measure of injustice than it experienced at their hands. The vanquished have no rights in the eyes of a conqueror. The sword of returning exiles, flushed by victory, and incensed by suffering, falls successively upon their enemies, upon those whom they suspect of being enemies, upon those who may hereafter become such. The Albizi had in general respected the legal forms of their free republic, which good citizens, and perhaps themselves, might hope one day to see more effective. The Medici made all their government conducive to hereditary monarchy. A multitude of noble citizens were driven from their country; some were even put to death. A balia was appointed for ten years, to exclude all the Albizi from magistracy, and for the sake of this security to the ruling faction, to supersede the legitimate institutions of the republic. After the expiration of this period, the dictatorial power was renewed on pretence of fresh danger, and this was repeated six times in twenty-one years.* In 1455 the constitutional mode of drawing magistrates was permitted to revive against the wishes of some of the leading party. They had good reason to be jealous of a liberty which was incompatible with their usurpation. The gonfaloniers, drawn at random from among respectable citizens, began to act with an independence to which the new oligarchy was little accustomed. Cosmo, indeed, the acknowledged chief of the party, perceiving that some who had acted in insubordination to him were looking forward to the opportunity of becoming themselves its leaders, was not unwilling to throw upon them the unpopularity attached to a usurpation by which he had maintained his influence. Without his apparent participation, though not against his will, the free constitution was again suspended by a balia appointed for the nomination of magistrates; and the regular drawing of names by lot was never, I believe, restored.* Cosmo died at an advanced age in 1464. His son, Piero de' Medici, though not deficient either in virtues or abilities, seemed too infirm in health for the administration of public affairs. At least he could only be chosen by a sort of hereditary title, which the party above mentioned, some from patriotic, more from selfish motives, were reluctant to admit. A strong opposition was raised to the family pretensions of the Medici. Like all Florentine factions, it trusted to violence; and the chance of arms was not in its favour. There is little to regret in the downfall of that oligarchy, which had all the disregard of popular rights without the generous virtues of the Medici.† From this revolution in 1466, when some of the most considerable citizens were banished, we may date an acknowledged supremacy in the house of Medici, the chief of which nominated the regular magistrates, and drew to himself the whole conduct of the republic.

The two sons of Piero, Lorenzo and Julian, especially the former, though young at their father's death [A. D. 1469], assumed, by the request of their friends, the reins of government. It was impossible that, among a people who had so many recollections to attach to the name of liberty, among so many citizens whom their ancient constitution invited to public trust, the control of a single family should excite no dissatisfaction; and perhaps their want

Lorenzo de Medici

the republic by sea; and an embassy despatched with presents to conciliate the sultan of Babylon, that is, of Grand Cairo.—Ammirato, p. 997. Florence had never before been so wealthy. The circulating money was reckoned (perhaps extravagantly) at 4,000,000 florins. The manufactures of silk and cloth of gold had never flourished so much. Architecture revived under Brunelleschi; literature under Leonard Aretin and Filelfo, p. 977. There is some truth in M. Sismondi's remark, that the Medici have derived part of their glory from their predecessors in government, whom they subverted, and whom they have rendered obscure. But the Milanese war, breaking out in 1423, tended a good deal to empoverish the city.

* Machiavelli, l. v. Ammirato.

* Ammirato, t. ii., p. 82–87.

† Ammirato, p. 93. Roscoe's Lorenzo de Medici, ch. 2. Machiavelli. Sismondi. The two latter are perpetual references in this part of history, where no other is made.

of any positive authority heightened the appearance of usurpation in their influence. But, if the people's wish to resign their freedom gives a title to accept the government of a country, the Medici were no usurpers. That family never lost the affections of the populace. The ery of Palle, Palle (their armorial distinction), would at any time rouse the Florentines to defend the chosen patrons of the republic. If their substantial influence could before be questioned, the conspiracy of the Pazzi, wherein Julian perished, excited an enthusiasm for the surviving brother that never ceased during his life. Nor was this any thing unnatural, or any severe reproach to Florence. All around, in Lombardy and Romagna, the lamp of liberty had long since been extinguished in blood. The freedom of Siena and Genoa was dearly purchased by revolutionary proscriptions; that of Venice was only a name. The republic which had preserved longest, and with greatest purity, that vestal fire, had at least no relative degradation to fear in surrendering herself to Lorenzo de' Medici. I need not in this place expatiate upon what the name instantly suggests, the patronage of science and art, and the constellation of scholars and poets, of architects and painters. whose reflected beams cast their radiance around his head. His political reputation, though far less durable, was in his own age as conspicuous as that which he acquired in the history of letters. Equally active and sagacious, he held his way through the varying combinations of Italian policy, always with credit, and generally with success. Florence, if not enriched, was upon the whole aggrandized during his administration, which was exposed to some severe storms from the unscrupulous adversaries, Sixtus IV. and Ferdinand of Naples, whom he was compelled to resist. As a patriot, indeed, we never can bestow upon Lorenzo de' Medici the meed of disinterested virtue. He completed that subversion of the Florentine republic which his two immediate ancestors had so well prepared. The two councils, her regular legislature, he superseded by a permanent senate of seventy persons;* while the gonfalonier and priors become a mockery and pageant to keep up the illusion of liberty, were taught that, in exercising a legitimate authority without the sanction of their prince, a name now first heard at Florence, they incurred the risk of punishment for their audacity.* Even the total dilapidation of his commercial wealth was repaired at the cost of the state; and the republic disgracefully screened the bankruptcy of the Medici by her own.† But, compared with the statesmen of his age, we can reproach Lorenzo with no heinous crime He had many enemies; his descendants had many more; but no unequivoca charge of treachery or assassination has been substantiated against his memory. By the side of Galeazzo or Ludovico Sforza, of Ferdinand or his son Alfonso of Naples, of the pope Sixtus IV., he shines with unspotted lustre. [A. D 1492.] So much was Lorenzo esteemed by his contemporaries, that his premature death has frequently been considered as

* Ammirato, p. 145. Machiavel says, l. viii., that this was done ristringere il governo, e che le deliberazioni importanti si riducessero in minore numero. Mr. Roscoe, vol. ii., p. 53, is puzzled how to explain this decided breach of the people's rights by his hero. But though it rather appears from Ammirato's expressions that the two councils were now abolished, yet from M. Sismondi, t. xi., p. 186, who quotes an author I have not seen, and from Nardi, p. 7, I should infer that they still formally subsisted.

* Cambi. a gonfalonier of justice, had, in concert with the priors, admonished some public officers for a breach of duty. Fu giudicato questo atto molto superbo, says Ammirato, che senza partecipazione di Lorenzo de' Medici, principe del governo, fosse seguito, che in Pisa in quel tempo si ritrovava, p. 184. The gonfalonier was fined for executing his constitutional functions. This was a downright confession that the republic was at an end; and all it provokes M. Sismondi to say is not too much, t. xi., p. 345.

† Since the Medici took on themselves the character of princes, they had forgotten how to be merchants. But, imprudently enough, they had not discontinued their commerce, which was of course mismanaged by agents, whom they did not overlook The consequence was the complete dilapidation of their vast fortune. The public revenues had been for some years applied to make up its deficiencies. But from the measures adopted by the republic, if we may still use that name, she should appear to have considered herself, rather than Lorenzo, as the debtor. The interest of the public debt was diminished one half. Many charitable foundations were suppressed. The circulating specie was taken at one fifth below its nominal value in payment of taxes, while the government continued to issue it at its former rate. Thus was Lorenzo reimbursed a part of his loss at the expense of all his fellow-citizens.—Sismondi, t. xi., p. 347. It is slightly alluded to by Machiavel.

The vast expenditure of the Medici for the sake of political influence would of itself have absorbed all their profits. Cosmo is said by Guicciardini to have spent 400,000 ducats in building churches monasteries, and other public works, .. i., p. 91 The expenses of the family between 1434 and 1471 in buildings. charities, and taxes alone, amounted to 663.755 florins; equal in value, according to Sismondi, to 32,000,000 francs at present.—Hist. des Républ., t. x., p. 173. They seem to have advanced moneys imprudently, through their agents, to Edward IV., who was not the best of debtors.—Comines, Mém. de Charles VIII. l. vii. c. 6.

the cause of those unhappy revolutions that speedily ensued, and which his foresight would, it was imagined, have been able to prevent; an opinion which, whether founded in probability or otherwise, attests the common sentiment about his character.

Pretensions of France upon Naples.

If indeed Lorenzo de' Medici could not have changed the destinies of Italy, however premature his death may appear, if we consider the ordinary duration of human existence, it must be admitted, that for his own welfare, perhaps for his glory, he had lived out the full measure of his time. An age of new and uncommon revolutions was about to arise, among the earliest of which the temporary downfall of his family was to be reckoned. The long-contested succession of Naples was again to involve Italy in war. The ambition of strangers was once more to desolate her plains. Ferdinand, king of Naples, had reigned for thirty years after the discomfiture of his competitor with success and ability; but with a degree of ill faith as well as tyranny towards his subjects that rendered his government deservedly odious. His son Alfonso, whose succession seemed now near at hand, was still more marked by these vices than himself.* Meanwhile, the pretensions of the house of Anjou had legally descended, after the death of old Regnier, to Regnier, duke of Lorraine, his grandson by a daughter; whose marriage into the house of Lorraine had, however, so displeased her father, that he bequeathed his Neapolitan title, along with his real patrimony, the county of Provence, to a count of Maine; by whose testament they became vested in the crown of France. Louis XI., while he took possession of Provence, gave himself no trouble about Naples. But Charles VIII., inheriting his father's ambition without that cool sagacity which restrained it in general from impracticable attempts, and far better circumstanced at home than Louis had ever been, was ripe for an expedition to vindicate his pretensions upon Naples, or even for more extensive projects. It was now two centuries since the kings of France had aimed, by intervals, at conquests in Italy. Philip the Fair and his successors were anxious to keep up a connexion with the Guelf party, and to be considered its natural heads, as the German emperors were of the Ghibelins. The long English wars changed all views of the court of France to self-defence. But, in the fifteenth century, its plans of aggrandizement beyond the Alps began to revive. Several times, as I have mentioned, the republic of Genoa put itself under the dominion of France. The dukes of Savoy, possessing most part of Piedmont, and masters of the mountain passes, were, by birth, intermarriage, and habitual policy, completely dedicated to the French interests.* In the former wars of Ferdinand against the house of Anjou, Pope Pius II., a very enlightened statesman, foresaw the danger of Italy from the prevailing influence of France, and deprecated the introduction of her armies.† But at that time the central parts of Lombardy were held by a man equally renowned as a soldier and a politician, Francesco Sforza. Conscious that a claim upon his own dominions subsisted in the house of Orleans, he maintained a strict alliance with the Aragonese dynasty at Naples, as having a common interest against France. But after his death the connexion between Milan and Naples came to be weakened. In the new system of alliances, Milan and Florence, sometimes including Venice, were combined against Ferdinand and Sixtus IV., an unprincipled and restless pontiff. Ludovico Sforza, who had usurped the guardianship of his nephew, the Duke of Milan, found, as that young man advanced to maturity, that one crime required to be completed by another. To

* Comines who speaks sufficiently ill of the father, sums up the son's character very concisely: Nul homme n'a este plus cruel que lui, ne plus mauvais, ne plus vicieux et plus infect, ne p'us gourmand que lui, l. vii., c. 13.

* Denina, Storia dell' Italia Occidentale, t. ii., passim. Louis XI. treated Savoy as a fief of France; interfering in all its affairs, and even taking on himself the regency after the death of. Philibert I., under pretence of preventing disorders, p. 185. The Marquis of Saluzzo, who possessed considerable territories in the south of Piedmont, had done homage to France ever since 1353 (p. 40), though to the injury of his real superior, the Duke of Savoy. This gave France another pretext for interference in Italy, p. 187.

† Cosmo de' Medici, in a conference with Pius II. at Florence, having expressed his surprise that the pope should support Ferdinand: Pontifex haud ferendum fuisse ait, regem a se constitutum, armis ejici, neque id Italiæ libertati cor ducere; Gallos, si regnum obtinuissent, Senas haud dubiè subacturos; Florentinos adversus lilia nihil acturos; Borsium Mutinæ ducem Gallis galliorem videri; Flaminiæ regulos ad Francos inclinare Genuam Francis subesse, et civitatem Astensem si pontifex Romanus aliquando Francorum amicus assumatur, nihil reliqui in Italiâ remanere quod non transeat in Gallorum nomen; tueri se Italiam, dum Ferdinandum tueretur.—Commentar. Pii Secundi, l. iv., p. 96. Spondanus, who led me to this passage, is very angry; but the year 1494 proved Pius II. to be a wary statesman.

depose and murder his ward was however a scheme that prudence, though not conscience, bade him hesitate to execute. He had rendered Ferdinand of Naples, and Piero de' Medici, Lorenzo's heir, his decided enemies. A revolution at Milan would be the probable result of his continuing in usurpation. [A. D. 1439.] In these circumstances, Ludovico Sforza excited the King of France to undertake the conquest of Naples.*

So long as the three great nations of Europe were unable to put forth their natural strength through internal separation or foreign war, the Italians had so little to dread for their independence, that their policy was altogether directed to regulating the domestic balance of power among themselves. In the latter part of the fifteenth century, a more enlarged view of Europe would have manifested the necessity of reconciling petty animosities, and sacrificing petty ambition, in order to preserve the nationality of their governments; not by attempting to melt down Lombards and Neapolitans, principalities and republics, into a single monarchy, but by the more just and rational scheme of a common federation. The politicians of Italy were abundantly competent, as far as cool and clear understandings could render them, to perceive the interests of their country. But it is the will of Providence, that the highest and surest wisdom, even in matters of policy, should never be unconnected with virtue. In relieving himself from an immediate danger, Ludovico Sforza overlooked the consideration that the presumptive heir of the King of France claimed by an ancient title that principality of Milan, which he was compassing by usurpation and murder. But neither Milan nor Naples was free from other claimants than France, nor was she reserved to enjoy unmolested the spoil of Italy. A louder and a louder strain of warlike dissonance will be heard from the banks of the Danube, and from the Mediterranean gulf. The dark and wily Ferdinand, the rash and lively Maximilian, are preparing to hasten into the lists; the schemes of ambition are assuming a more comprehensive aspect; and the controversy of Neapolitan succession is to expand into the long rivalry between the houses of France and Austria But here, while Italy is still untouched and before as yet the first lances of France gleam along the defiles of the Alps, we close the history of the Middle Ages.

CHAPTER IV.

THE HISTORY OF SPAIN TO THE CONQUEST OF GRANADA.

Kingdom of the Visigoths.—Conquest of Spain by the Moors.—Gradual Revival of the Spanish Nation.—Kingdoms of Leon, Aragon, Navarre, and Castile, successively formed.—Chartered Towns of Castile.—Military Orders.—Conquest of Ferdinand III. and James of Aragon.—Causes of the delay in expelling the Moors.—History of Castile continued.—Character of the government. —Peter the Cruel.—House of Trastamare.—John II.--Henry IV.—Constitution of Castile.—National Assemblies or Cortes.—Their constituent parts.—Right of Taxation.—Legislation.—Privy Council of Castile.—Laws for the protection of Liberty.—Imperfections of the Constitution.—Aragon.—Its history in the fourteenth and fifteenth centuries.—Disputed succession.—Constitution of Aragon.—Free spirit of its Aristocracy.—Privilege of Union.—Powers of the Justiza.—Legal Securities.—Illustrations.—Other Constitutional Laws.—Valencia and Catalonia. —Union of two Crowns by the Marriage of Ferdinand and Isabella.—Conquest of Granada.

THE history of Spain during the middle ages ought to commence with the dynasty of the Visigoths; a nation among the first that assaulted and overthrew the Roman Empire, and whose establishment preceded by nearly half a century the invasion of Clovis. Vanquished by that conqueror in the battle of Poitiers, the Gothic monarchs lost their extensive dominions in Gaul, and transferred their residence from Toulouse to Toledo. But I hold the annals of barbarians so unworthy of remembrance, that I will not detain the reader by naming one sovereign of that obscure race. The Merovingian kings of France were perhaps as deeply stained by atrocious crimes, but their history, slightly as I have noticed it, is the necessary foundation of that of Charlemagne and illustrates the feudal system and constitutional antiquities of France. If those of Castile had been equally interesting to the historical student, I should have taken the same pains to trace their

Kingdom of Visigoths in Spain.

* Guicciardini, l. i.

origin. in the Gothic monarchy. For that is at least as much the primary source of the old Castilian constitution, as the Anglo-Saxon polity of our own. It may, however, suffice to mention, that it differed in several respects from that of the Franks during the same period. The crown was less hereditary, or at least the regular succession was more frequently disturbed. The prelates had a still more commanding influence in temporal government. The distinction of Romans and barbarians was less marked, the laws more uniform, and approaching nearly to the imperial code. The power of the sovereign was perhaps more limited by an aristocratical council than in France, but it never yielded to the dangerous influence of mayors of the palace. Civil wars and disputed successions were very frequent but the integrity of the kingdom was not violated by the custom of partition.

Conquest by the Saracens.

Spain, after remaining for nearly three centuries in the possession of the Visigoths, fell under the yoke of the Saracens in 712. The fervid and irresistible enthusiasm which distinguished the youthful period of Mahometanism, might sufficiently account for this conquest; even if we could not assign additional causes,—the factions which divided the Goths, the resentment of disappointed pretenders to the throne, the provocations of Count Julian, and the temerity that risked the fate of an empire on the chances of a single battle. It is more surprising, that a remnant of this ancient monarchy should not only have preserved its national liberty and name in the northern mountains, but waged for some centuries a successful, and generally an offensive warfare against the conquerors, till the balance was completely turned in its favour, and the Moors were compelled to maintain almost as obstinate and protracted a contest for a small portion of the peninsula. But the Arabian monarchs of Cordova found in their success and imagined security a pretext for indolence; even in the cultivation of science, and contemplation of the magnificent architecture of their mosques and palaces, they forgot their poor but daring enemies in the Asturias; while, according to the nature of despotism, the fruits of wisdom or bravery in one generation were lost in the follies and effeminacy of the next. Their kingdom was dismembered by successful rebels, who formed the states of Toledo, Huesca, Saragosa, and others less eminent; and these, in their own mutual contests, not only relaxed their natural enmity towards the Christian princes, but sometimes sought their alliance.*

Kingdom of Leon.

The last attack, which seemed to endanger the reviving monarchy of Spain, was that of Almanzor, the illustrious vizier of Haccham II., towards the end of the tenth century, wherein the city of Leon, and even the shrine of Compostella, were burnt to the ground. For some ages before this transient reflux gradual encroachments had been made upon the Saracens; and the kingdom, originally styled of Oviedo, the seat of which was removed to Leon in 914, had extended its boundary to the Duero, and even to the mountainous chain of the Guadarrama. The province of old Castile, thus denominated, as is generally supposed, from the castles erected, while it remained a march or frontier against the Moors, was governed by hereditary counts, elected originally by the provincial aristocracy, and virtually independent, it seems probable, of the kings of Leon though commonly serving them in war as brethren of the same faith and nation.†

Kingdoms of Navarre and Aragon.

While the kings of Leon were thus occupied in recovering the western provinces, another race of Christian princes grew up silently under the shadow of the Pyrenean mountains. Nothing can be more obscure than the beginnings of those little states, which were formed in Navarre and the country of Soprarbe. They might perhaps be almost contemporaneous with the Moorish conquests. On both sides of the Pyrenees dwelt an aboriginal people; the last to undergo the yoke, and who had never acquired the language, of Rome. We know little of these intrepid mountaineers in the dark period which elapsed under the Gothic and Frank dynasties till we find them cutting off the rear guard of Charlemagne in Roncesvalles,

* Cardonne, Hist. de l'Afrique et de l'Espagne.

† According to Roderic of Toledo, one of the earliest Spanish historians, though not older than the beginning of the thirteenth century, the nobles of Castile, in the reign of Froila, about the year 924, sibi et posteris providerunt, et duos militeæ non de potentioribus, sed de prudentioribus elegerunt, quod et judices statuerunt, ut dissensiones patriæ et querelantium causæ suo judicio sopirentur, l. v., c. 1. Several other passages in the same write prove that the counts of Castile were nearly independent of Leon, at least from the time of Ferdinand Gonsalvo about the middle of the tenth century. Ex quo iste suscepit suæ patriæ comitatum cessaverunt reges Asturiarum insolescere in Castellam, et a flumine Pisoricâ nihil amplius vindicârunt, l. v., c. 2. Marina, in his Ensayo Historico Critico, is disposed to controvert this fact.

and maintaining at least their independence, though seldom, like the kings of Asturias, waging offensive war against the Saracens. The town of Jaca, situated among long narrow valleys that intersect the southern ridges of the Pyrenees, was the capital of a little free state, which afterward expanded into the monarchy of Aragon.* A territory rather more extensive belonged to Navarre, the kings of which fixed their seat at Pampelona. Biscay seems to have been divided between this kingdom and that of Leon. The connexion of Aragon or Soprarbe and Navarre was very intimate, and they were often united under a single chief.

Kingdom of Castile.

At the beginning of the eleventh century, Sancho the Great, king of Navarre and Aragon, was enabled to render his second son, Ferdinand, count, or, as he assumed the title, King of Castile. This effectually dismembered that province from the kingdom of Leon; but their union soon became more complete than ever, though with a reversed supremacy. Bermudo III., king of Leon, fell in a battle with the new king of Castile, who had married his sister; and Ferdinand, in her right or in that of conquest, became master of the united monarchy. This cessation of hostilities between the Christian states enabled them to direct a more unremitting energy against their ancient enemies, who were now sensibly weakened by the various causes of decline to which I have already alluded. During the eleventh century, the Spaniards were almost always superior in the field; the towns, which they began by pillaging, they gradually possessed; their valour was heightened by the customs of chivalry, and inspired by the example of the Cid; and, before the end of this age, Alonso VI. recovered the ancient metropolis of the monarchy, the city of Toledo. This was the severest blow which the Moors had endured, and an unequivocal symptom of that change in their relative strength which, from being so gradual, was the more irretrievable. Calamities scarcely inferior fell upon them in a different quarter. The kings of Aragon (a title belonging originally to a little district upon the river of that name) had been cooped up almost in the mountains by the small Moorish states north of the Ebro, especially that of Huesca. About the middle of the eleventh century, they began to attack their neighbours with success; the Moors lost one town after another, till, in 1118, exposed and weakened by the reduction of all these places the city of Saragosa, in which a line of Mahometan princes had flourished for several ages, became the prize of Alfonso I., and the capital of his kingdom. The southern parts of what is now the province of Aragon were successively reduced during the twelfth century; while all new Castile and Estremadura became annexed in the same gradual manner to the dominion of the descendants of Alfonso VI.

Capture of Toledo.

And Saragosa.

Although the feudal system cannot be said to have obtained in the kingdoms of Leon and Castile, their peculiar situation gave the aristocracy a great deal of the same power and independence which resulted in France and Germany from that institution. The territory successively recovered from the Moors, like waste lands reclaimed, could have no proprietor but the conquerors; and the prospect of such acquisitions was a constant incitement to the nobility of Spain, especially to those who had settled themselves on the Castilian frontier. In their new conquests, they built towns and invited Christian settlers, the Saracen inhabitants being commonly expelled, or voluntarily retreating to the safer provinces of the south. Thus Burgos was settled by a count of Castile about 880; another fixed his seat at Osma; a third at Sepulveda; a fourth at Salamanca. These cities were not free from incessant peril of a sudden attack till the union of the two kingdoms under Ferdinand I., and, consequently, the necessity of keeping in exercise a numerous and armed

Mode of settling the new conquests.

* The Fueros, or written laws of Jaca, were perhaps more ancient than any local customary in Europe. Alfonso III. confirms them by name of the ancient usages of Jaca. They prescribe the descent of lands and moveables, as well as the election of municipal magistrates. The following law, which enjoins the rising in arms on a sudden emergency, illustrates, with a sort of romantic wildness, the manners of a pastoral but warlike people, and reminds us of a well-known passage in the Lady of the Lake. De appellitis ita statuimus Cum homines de villis, vel qui stant in montanis cum suis ganatis [gregibus], audierint appellitum; omnes capiant arma, et dimissis ganatis, et omnibus aliis suis faziendis [negotiis] sequantur appellitum. Et si illi qui fuerint magis remoti, invenerint in villâ magis proximâ appellito [deest aliquid?] omnes qui nondum fuerint egressi tunc villam illam. quæ tardius secuta est appellitum, pecent [solvant] unam baccam [vaccam]; et unusquisque homo ex illis qui tardius secutus est appellitum, et quem magis remoti præcesserint, pecet tres solidos, quomodo nobis videbitur, partiendos. Tamen in Jacâ et in aliis villis, sint aliqui nominati et certi, quos elegerint consules, qui remaneant ad villas custodiendas et defendendas.--Biancæ Commentaria in Scriptores Hispaniæ Illustrantia, p. 595.

population gave a character of personal freedom and privilege to the inferior classes, which they hardly possessed at so early a period in any other monarchy. Villanage seems never to have been established in the Hispano-Gothic kingdoms Leon and Castile; though I confess it was far from being unknown in that of Aragon, which had formed its institutions on a feudal pattern. Since nothing makes us forget the arbitrary distinctions of rank so much as participation in any common calamity, every man who had escaped the great shipwreck of liberty and religion in the mountains of Asturias was invested with a personal dignity, which gave him value in his own eyes and those of his country. It is probably this sentiment, transmitted to posterity, and gradually fixing the national character, that has produced the elevation of manner remarked by travellers in the Castilian peasant. But while these acquisitions of the nobility promoted the grand object of winning back the peninsula from its invaders, they by no means invigorated the government, or tended to domestic tranquillity.

Chartered towns or communities.

A more interesting method of securing the public defence was by the institution of chartered towns or communities. These were established at an earlier period than in France and England, and were in some degree of a peculiar description. Instead of purchasing their immunities, and almost their personal freedom, at the hands of a master, the burgesses of Castilian towns were invested with civil rights and extensive property on the more liberal condition of protecting their country. The earliest instance of the erection of a community is in 1020, when Alfonso V., in the cortes at Leon, established the privileges of that city with a regular code of laws, by which its magistrates should be governed. The citizens of Carrion, Llanes, and other towns, were incorporated by the same prince. Sancho the Great gave a similar constitution to Naxara. Sepulveda had its code of laws in 1076 from Alfonso VI.; in the same reign Logrono and Sahagun acquired their privileges, and Salamanca not long afterward. The fuero, or original charter of a Spanish community, was properly a compact by which the king or lord granted a town and adjacent district to the burgesses, with various privileges, and especially that of choosing magistrates and a common council, who were bound to conform themselves to the laws prescribed by the founder. These laws, civil as well as criminal, though essentially derived from the ancient code of the Visigoths, which continued to be the common law of Castile till the fourteenth or fifteenth century, varied from each other in particular usages, which had probably grown up and been established in these districts before their legal confirmation. The territory held by chartered towns was frequently very extensive, far beyond any comparison with corporations in our own country or in France; including the estates of private landholders, subject to the jurisdiction and control of the municipality, as well as its inalienable demesnes, allotted to the maintenance of the magistrates and other public expenses. In every town the king appointed a governor to receive the usual tributes, and watch over the police and the fortified places within the district; but the administration of justice was exclusively reserved to the inhabitants and their elected judges. Even the executive power of the royal officer was regarded with jealousy; he was forbidden to use violence towards any one without legal process; and, by the fuero of Logrono, if he attempted to enter forcibly into a private house, he might be killed with impunity. These democratical customs were altered in the fourteenth century by Alfonso XI., who vested the municipal administration in a small number of jurats or regidors. A pretext for this was found in some disorders to which popular elections had led; but the real motive, of course, must have been to secure a greater influence for the crown, as in similar innovations of some English kings.

In recompense for such liberal concessions, the incorporated towns were bound to certain money payments and to military service. This was absolutely due from every inhabitant, without dispensation or substitution, unless in case of infirmity. The royal governor and the magistrates, as in the simple times of primitive Rome, raised and commanded the militia; who, in a service always short, and for the most part necessary, preserved that delightful consciousness of freedom, under the standard of their fellow-citizens and chosen leaders, which no mere soldier can enjoy. Every man of a certain property was bound to serve on horseback, and was exempted in return from the payment of taxes. This produced a distinction between the *caballeros*, or noble class, and the *pecheros*, or payers of tribute. But the distinction appears to have been founded only upon

wealth, as in the Roman equites, and not upon hereditary rank, though it most likely prepared the way for the latter. The horses of these caballeros could not be seized for debt; in some cases they were exclusively eligible to magistracy; and their honour was protected by laws which rendered it highly penal to insult or molest them. But the civil rights of rich and poor in courts of justice were as equal as in England.*

Military orders.

The progress of the Christian arms in Spain may in part be ascribed to another remarkable feature in the constitution of that country, the military orders. These had already been tried with signal effect in Palestine; and the similar circumstances of Spain easily led to an adoption of the same policy. In a very few years after the first institution of the Knights Templars, they were endowed with great estates, or rather districts, won from the Moors, on condition of defending their own and the national territory. These lay chiefly in the parts of Aragon beyond the Ebro, the conquest of which was then recent and insecure.† So extraordinary was the respect for this order, and that of St. John, and so powerful the conviction that the hope of Christendom rested upon their valour, that Alfonso the First, king of Aragon, dying childless, bequeathed to them his whole kingdom; an example of liberality, says Mariana, to surprise future times, and displease his own.‡ The states of Aragon annulled, as may be supposed, this strange testament; but the successor of Alfonso was obliged to pacify the ambitious knights by immense concessions of money and territory; stipulating even not to make peace with the Moors against their will.§ In imitation of these great military orders, common to all Christendom, there arose three Spanish institutions of a similar kind, the orders of Calatrava, Santiago, and Alcantara. The first of these was established in 1158; the second and most famous had its charter from the pope in 1175, though it seems to have existed previously; the third branched off from that of Calatrava at a subsequent time.* These were military colleges, having their walled towns in different parts of Castile, and governed by an elective grand master, whose influence in the state was at least equal to that of any of the nobility. In the civil dissensions of the fourteenth and fifteenth centuries, the chiefs of these incorporated knights were often very prominent.

Final union of Leon and Castile.

The kingdoms of Leon and Castile were unwisely divided anew by Alfonso VII., between his sons Sancho and Ferdinand, and this produced not only a separation, but a revival of the ancient jealousy, with frequent wars, for near a century. At length, in 1238, Ferdinand III., king of Castile, reunited for ever the two branches of the Gothic monarchy. He employed their joint strength against the Moors whose dominion, though it still embraced the finest provinces of the peninsula, was sinking by internal weakness, and had never recovered a tremendous defeat at Banos di Toloso, a few miles from Baylen, in 1210.† Ferdinand, bursting into Andalusia, took its great capital, the city of Cordova [A. D. 1236], not less ennobled by the cultivation of Arabian science, and by the names of Avicenna and Averroes, than by the splendid works of a rich and munificent dynasty.‡ In a few years more, Seville was added to his conquests, and the Moors lost their favourite regions on the banks of the Guadalquivir.

Conquest of Andalusia.

And Valencia

James I. of Aragon, the victories of whose long reign gave him the surname of Conqueror, reduced the city and kingdom of Valencia, the Balearic Isles, and the kingdom of Murcia; but the last was

* I am indebted for this account of municipal towns in Castile to a book published at Madrid in 1808, immediately after the revolution, by the Doctor Marina, a canon of the church of St. Isidor, entitled, Ensayo Historico-Critico sobre la antigua legislacion y principales cuerpos legales de los reynos de Lyon y Castilla, especialment sobre el codigo de D. Alonso el Sacio, conocido con el nombre de las Siete Partidas. This work is perhaps not easily to be procured in England: but an article in the Edinburgh Review, No. XLIII., will convey a sufficient notion of its contents.

† Mariana, Hist. Hispan., l. x., c. 10.

‡ L. x., c. 15 § L. x., c. 18

* L. xi., c. 6, 13; l. xii., c. 3.

† A letter of Alfonso IX., who gained this victory, to Pope Innocent III., puts the loss of the Moors at 180,000 men. The Arabian historians, though without specifying numbers, seem to confirm this immense slaughter, which nevertheless it is difficult to conceive before the invention of gunpowder, or indeed since.—Cardonne, t. ii., p. 327.

‡ If we can rely on a Moorish author, quoted by Cardonne (t. i., p. 337), the city of Cordova contained, I know not exactly in what century 200,000 houses, 600 mosques, and 900 public baths. There were 12,000 towns and villages on the banks of the Guadalquivir. The mines of gold and silver were very productive. And the revenues of the khalifs of Cordova are said to have amounted to 130,000,000 of French money; besides large contributions that, according to the practice of oriental governments, were paid in the fruits of the earth. Other proofs of the extraordinary opulence and splendour of this monarchy are dispersed in Cardonne's work, from which they have been chiefly borrowed by later writers. The splendid engravings in Murphy's Moorish antiquities of Spain illustrate this subject.

annexed, according to compact, to the crown of Castile.

Expulsion of the Moors long delayed.

It could hardly have been expected about the middle of the thirteenth century, when the splendid conquests of Ferdinand and James had planted the Christian banner on the three principal Moorish cities, that two hundred and fifty years were yet to elapse before the rescue of Spain from their yoke should be completed. Ambition, religious zeal, national enmity, could not be supposed to pause in a career which now seemed to be obstructed by such moderate difficulties; but we find, on the contrary, the exertions of the Spaniards begin from this time to relax, and their acquisitions of territory to become more slow. One of the causes, undoubtedly, that produced this unexpected protraction of the contest, was the superior means of resistance which the Moors found in retreating. Their population, spread originally over the whole of Spain, was now condensed, and, if I may so say, become no further compressible, in a single province. It had been mingled, in the northern and central parts, with the Mozarabic Christians, their subjects and tributaries, not perhaps treated with much injustice, yet naturally and irremediably their enemies. Toledo and Saragosa, when they fell under a Christian sovereign, were full of these inferior Christians, whose long intercourse with their masters has infused the tones and dialect of Arabia into the language of Castile.* But in the twelfth century, the Moors, exasperated by defeat, and jealous of secret disaffection, began to persecute their Christian subjects, till they renounced or fled for their religion; so that, in the southern provinces, scarcely any professors of Christianity were left at the time of Ferdinand's invasion. An equally severe policy was adopted on the other side. The Moors had been permitted to dwell in Saragosa, as the Christians had dwelt before, subjects, not slaves; but, on the capture of Seville, they were entirely expelled, and new settlers invited from every part of Spain. The strong fortified towns of Andalusia, such as Gibraltar, Algeziras, Tariffa, maintained also a more formidable resistance than had been experienced in Castile; they cost tedious sieges, were sometimes recovered by the enemy, and were always liable to his attacks. But the great protection of the Spanish Mahometans was found in the alliance and ready aid of their kindred beyond the Straits. Accustomed to hear of the African Moors only as pirates, we cannot easily conceive the powerful dynasties, the warlike chiefs, the vast armies, which for seven or eight centuries illustrate the annals of that people. Their assistance was always afforded to the true believers in Spain, though their ambition was generally dreaded by those who stood in need of their valour.*

Probably, however, the kings of Granada were most indebted to the indolence which gradually became characteristic of their enemies. By the cession of Murcia to Castile, the kingdom of Aragon shut itself out from the possibility of extending those conquests which had ennobled her earlier sovereigns; and their successors, not less ambitious and enterprising, diverted their attention towards objects beyond the peninsula. The Castilian, patient and undesponding in bad success, loses his energy as the pressure becomes less heavy, and puts no ordinary evil in comparison with the exertions by which it must be removed. The greater part of his country freed by his arms, he was content to leave the enemy in a single province, rather than undergo the labour of making his triumph complete.

Alfonso X.

[A. D. 1252.] If a similar spirit of insubordination had not been found compatible in earlier ages with the aggrandizement of the Castilian monarchy, we might ascribe its want of splendid successes against the Moors to the continued rebellions which disturbed that government for more than a century after the death of Ferdinand III. His son, Alfonso X., might justly acquire the surname of Wise for his general proficiency in learning, and especially in astronomical science; if these attainments deserved praise in a king, who was incapable of preserving his subjects in their duty. As a legislator, Alfonso, by his code of the Siete Partidas, sacrificed the ecclesiastical rights of his crown to the usurpation of Rome;† and his philosophy sunk below the level of ordinary prudence, when he permitted the phantom of an imperial crown in Germany to seduce his hopes for almost twenty years. For the sake of such an illusion he would even have withdrawn himself from Castile, if the states had not remonstrated against an expedition that would probably have cost him the kingdom. In the latter years of his turbulent reign, Al

* Mariana, xi, c. 1. Gibbon, c. 51.

* Cardonne, t. ii. and iii., passim.

† Marina, Ensayo Historico-Critico, p. 275.

onso had to contend against his son. The right of representation was hitherto unknown in Castile, which had borrowed little from the customs of feudal nations. By the received law of succession, the nearer was always preferred to the more remote, the son to the grandson. Alfonso X. had established the different maxim of representation by his code of the Siete Partidas, the authority of which, however, was not universally acknowledged The question soon came to an issue, on the death of his elder son Ferdinand, leaving two male children. Sancho, their uncle, asserted his claim, founded upon the ancient Castilian right of succession; and this, chiefly no doubt through fear of arms, though it did not want plausible arguments, was ratified by an assembly of the cortes, and secured, notwithstanding the king's reluctance, by the courage of Sancho. But the descendants of Ferdinand, generally called the infants of La Cerda, by the protection of France, to whose royal family they were closely allied, and of Aragon, always prompt to interfere in the disputes of a rival people, continued to assert their pretensions for more than half a century, and, though they were not very successful, did not fail to aggravate the troubles of their country.

Civil disturbances of Castile.

The annals of Sancho IV. and his two immediate successors, Ferdinand IV. and Alfonso XI., present a series of unhappy and dishonourable civil dissensions with too much rapidity to be remembered or even understood. Although the Castilian nobility had no pretence to the original independence of the French peers, or to the liberties of feudal tenure, they assumed the same privilege of rebelling upon any provocation from their sovereign. When such occurred, they seem to have been permitted, by legal custom, to renounce their allegiance by a solemn instrument, which exempted them from the penalties of treason.* A very few families composed an oligarchy, the worst and most ruinous condition of political society, alternately the favourites and ministers of the prince, or in arms against him. If unable to protect themselves in their walled towns, and by the aid of their faction, these Christian patriots retired to Aragon or Granada, and excited a hostile power against their country and perhaps their religion. Nothing is more common in the Castilian history than instances of such defection Mariana remarks coolly of the family of Castro, that they were much in the habit of revolting to the Moors.* This house and that of Lara were at one time the great rivals for power; but from the time of Alfonso X. the former seems to have declined, and the sole family that came in competition with the Laras during the tempestuous period that followed was that of Haro, which possessed the lordship of Biscay by an hereditary title The evils of a weak government were aggravated by the unfortunate circumstances in which Ferdinand IV. and Alfonso XI. ascended the throne; both minors, with a disputed regency, and the interval too short to give ambitious spirits leisure to subside. There is, indeed, some apology for the conduct of the Laras and Haros in the character of their sovereigns, who had but one favourite method of avenging a dissembled injury, or anticipating a suspected treason. Sancho IV. assassinates Don Lope Haro in his palace at Valladolid. Alfonso XI. invites to court the infant Don Juan his first cousin, and commits a similar violence. Such crimes may be found in the history of other countries, but they were nowhere so usual as in Spain, which was far behind France, England, and even Germany, in civilization.

Sancho IV. 1284. Ferdinand IV. 1295 Alfonso XI. 1312.

[A. D. 1350.] But whatever violence and arbitrary spirit might be imputed to Sancho and Alfonso, was forgotten in the unexampled tyranny of Peter the Cruel. A suspicion is frequently intimated by Mariana, which seems in more modern times to have gained credit, that party malevolence has at least grossly exaggerated the enormities of this prince.† It is difficult, how-

Peter the Cruel.

* Mariana, l. xiii., c. 11.

* Alvarus Castrius patriâ aliquantò antea, uti moris erat, renunciatâ.—Castria gens per hæc tempora ad Mauros sæpe defecisse visa est, l. xii., c. 12. See also chapters 17 and 19.

† There is in general room enough for skepticism as to the characters of men who are only known to us through their enemies. History is full of calumnies, and of calumnies that can never be effaced. But I really see no ground for thinking charitably of Peter the Cruel.—Froissart, part 1., c. 230, and Matteo Villani (in Script. Rerum Italic., t. xiv., p. 43), the latter of whom died before the rebellion of Henry of Trastamare, speak of him much in the same terms as the Spanish historians And why should Ayala be doubted, when he gives a long list of murders committed in the face of day, within the recollection of many persons living when he wrote? There may be a question whether Richard III. smothered his nephews in the tower; but nobody can dispute that Henry VIII. cut off Anna Bullen's head.

The passage from Matteo Villani above mentioned is as follows —Cominciò aspramente a

ever, to believe that a number of atrocious acts, unconnected with each other, and generally notorious enough in their circumstances, have been ascribed to any innocent man. The history of his reign, chiefly derived, it is admitted, from the pen of an inveterate enemy, Lope de Ayala, charges him with the murder of his wife, Blanche of Bourbon, most of his brothers and sisters, with Eleanor Gusman their mother, many Castilian nobles, and multitudes of the commonalty; besides continual outrages of licentiousness, and especially a pretended marriage with a noble lady of the Castrian family. At length a rebellion was headed by his illegitimate brother, Henry, count of Trastamare, with the assistance of Aragon and Portugal. This, however, would probably have failed of dethroning Peter, a resolute prince, and certainly not destitute of many faithful supporters, if Henry had not invoked the more powerful succour of Bertrand du Guesclin, and the companies of adventure, who, after the pacification between France and England, had lost the occupation of war, and retained only that of plunder. With mercenaries so disciplined it was in vain for Peter to contend; but, abandoning Spain for a moment, he had recourse to a more powerful weapon from the same armory. Edward the Black Prince, then resident at Bourdeaux, was induced, by the promise of Biscay, to enter Spain as the ally of Castile [A. D. 1367]; and at the great battle of Navarette he continued lord of the ascendant over those who had so often already been foiled by his prowess. Du Guesclin was made prisoner, Henry fled to Aragon, and Peter remounted the throne. But a second revolution was at hand: the Black Prince, whom he had ungratefully offended, withdrew into Guienne; and he lost his kingdom and life in a second short contest with his brother.

House of Trastamare. Henry II 1368. John I. 1379. Henry III. 1390.

A more fortunate period began with the accession of Henry. His own reign was hardly disturbed by any rebellion; and though his successors, John I. and Henry III., were not altogether so unmolested, especially the latter, who ascended the throne in his minority; yet the troubles of their time were slight in comparison with those formerly excited by the houses of Lara and Haro, both of which were now happily extinct. Though Henry II.'s illegitimacy left him no title but popular choice, his queen was sole representative of the Cerdas, the offspring, as has been mentioned above, of Sancho IV.'s elder brother, and by the extinction of the younger branch, unquestioned heiress of the royal line. Some years afterward, by the marriage of Henry III. with Catharine, daughter of John of Gaunt and of Constance, an illegitimate child of Peter the Cruel, her pretensions, such as they were, became merged in the crown.

[A. D. 1406.] No kingdom could be worse prepared to meet the disorders of a minority than Castile, and in none did the circumstance so frequently recur. John II. was but fourteen months old at his accession; and, but for the disinterestedness of his uncle Ferdinand, the nobility would have been inclined to avert the danger by placing that prince upon the throne. In this instance, however, Castile suffered less from faction during the infancy of her sovereign than in his maturity. The queen dowager, at first jointly with Ferdinand, and solely after his accession to the crown of Aragon, administered the government with credit. Fifty years had elapsed at her death, in 1418, since the elevation of the house of Trastamare, who had entitled themselves to public affection by conforming themselves more strictly than their predecessors to the constitutional laws of Castile, which were never so well established as during this period. In external affairs their reigns were not what is considered as glorious. [A. D. 1385.] They were generally at peace with Aragon and Granada, but one memorable defeat by the Portuguese at Aljubarrota disgraces the annals of John I., whose cause was as unjust as his arms were unsuccessful. This comparatively golden period ceases at the majority of John II. His reign was filled up by a series of conspiracies and civil wars, headed by his cousins, John and Henry, the infants of Aragon, who enjoyed very extensive territories in Castile by the testament of their father Ferdinand. Their brother, the King of Aragon, frequently lent the assistance of his arms. John himself, the elder of these two princes, by marriage with the heiress of the kingdom of Navarre, stood in a double relation to Castile, as a neighbouring sovereign, and as a member of the native oligarchy. These conspiracies were all ostensibly directed against the favourite of John II., Alvaro de Luna who

Power and fall of Alvaro de Luna

far ubbidire, perchè temendo de' suoi baroni, trovò modo di far infamare l'uno l'altro, e prendendo cagione, gli cominciò ad uccidere con le sue mani. E in brieve tempo ne fece morire 25, e tre suoi fratelli fece morire. &c.

retained for five-and-thirty years an absolute control over his feeble master. The adverse faction naturally ascribed to this powerful minister every criminal intention and all public mischiefs. He was certainly not more scrupulous than the generality of statesmen, and appears to have been rapacious in accumulating wealth. But there was an energy and courage about Alvaro de Luna which distinguish him from the cowardly sycophants who usually rise by the favour of weak princes; and Castile probably would not have been happier under the administration of his enemies. His fate is among the memorable lessons of history. After a life of troubles endured for the sake of this favourite, sometimes a fugitive, sometimes a prisoner, his son heading rebellions against him, John II. suddenly yielded to an intrigue of the palace, and adopted sentiments of dislike towards the man he had so long beloved. No substantial charge appears to have been brought against Alvaro de Luna, except that general malversation which it was too late for the king to object to him. The real cause of John's change of affection was, most probably, the insupportable restraint which the weak are apt to find in that spell of a commanding understanding which they dare not break; the torment of living subject to the ascendant of an inferior, which has produced so many examples of fickleness in sovereigns. That of John II. is not the least conspicuous. Alvaro de Luna was brought to a summary trial and beheaded; his estates were confiscated. He met his death with the intrepidity of Strafford, to whom he seems to have borne some resemblance in character.

John II. did not long survive his minister, dying in 1454, after a reign that may be considered as inglorious, compared with any except that of his successor. If the father was not respected, the son fell completely into contempt He had been governed by Pacheco, marquis of Villena, as implicitly as John by Alvaro de Luna. This influence lasted for some time afterward. But the king inclining to transfer his confidence to the queen, Joanna of Portugal, and to one Bertrand de Gueva, upon whom common fame had fixed as her paramour, a powerful confederacy of disaffected nobles was formed against the royal authority. In what degree Henry IV.'s government had been improvident or oppressive towards the people, it is hard to determine. The chiefs of that rebellion, Carillo, archbishop of Toledo, the Admiral of Castile, a veteran leader of faction and the Marquis of Villena, so lately the king's favourite, were undoubtedly actuated only by selfish ambition and revenge [A. D. 1465.] They deposed Henry in an assembly of their faction at Avila, with a sort of theatrical pageantry which has often been described. But modern historians, struck by the appearance of judicial solemnity in this proceeding, are sometimes apt to speak of it as a national act; while, on the contrary, it seems to have been reprobated by the majority of the Castilians as an audacious outrage upon a sovereign, who, with many defects, had not been guilty of any excessive tyranny. The confederates set up Alfonso, the king's brother, and a civil war of some duration ensued, in which they had the support of Aragon. The Queen of Castile had at this time borne a daughter, whom the enemies of Henry IV., and indeed no small part of his adherents, were determined to treat as spurious. Accordingly, after the death of Alfonso, his sister Isabel was considered as heiress of the kingdom. She might have aspired, with the assistance of the confederates, to its immediate possession but, avoiding the odium of a contest with her brother, Isabel agreed to a treaty, by which the succession was absolutely settled upon her. [A. D. 1469.] This arrangement was not long afterward followed by the union of that princess with Ferdinand, son of the King of Aragon This marriage was by no means acceptable to a part of the Castilian oligarchy who had preferred a connexion with Portugal. And as Henry had never lost sight of the interests of one whom he considered, or pretended to consider, as his daughter, he took the first opportunity of revoking his forced disposition of the crown, and restoring the direct line of succession in favour of the Princess Joanna. Upon his death, in 1474, the right was to be decided by arms. Joanna had on her side the common presumptions of law, the testamentary disposition of the late king, the support of Alfonso king of Portugal, to whom she was betrothed, and of several considerable leaders among the nobility, as the young Marquis of Villena, the family of Mendoza, and the Archbishop of Toledo, who, charging Ferdinand with ingratitude, had quitted a party which he had above all men contributed to strengthen For Isabella were the general belief of Joanna's illegitimacy, the assistance of Aragon, the adherence of a majority both among the nobles and people, and, more than all

Henry IV.

the reputation of stability which both she and her husband had deservedly acquired. The scale, however, was pretty equally balanced, till the King of Portugal having been defeated at Toro, in 1476, Joanna's party discovered their inability to prosecute the war by themselves, and successively made their submission to Ferdinand and Isabella.

Constitution of Castile. Succession of the crown.

The Castilians always considered themselves as subject to a legal and limited monarchy. For several ages the crown was elective, as in most nations of German origin, within the limits of one royal family.* In general, of course, the public choice fell upon the nearest heir; and it became a prevailing usage to elect a son during the lifetime of his father; till, about the eleventh century, a right of hereditary succession was clearly established. But the form of recognising the heir-apparent's title in an assembly of the cortes has subsisted until our own time.†

National councils.

In the original Gothic monarchy of Spain, civil as well as ecclesiastical affairs were decided in national councils, the acts of many of which are still extant, and have been published in ecclesiastical collections. To these assemblies the dukes and other provincial governors, and in general the principal individuals of the realm, were summoned along with spiritual persons. This double aristocracy of church and state continued to form the great council of advice and consent in the first ages of the new kingdoms of Leon and Castile. The prelates and nobility, or rather some of the more distinguished nobility, appear to have concurred in all general measures of legislation, as we infer from the preamble of their statutes. It would be against analogy, as well as without evidence, to suppose that any representation of the commons had been formed in the earlier period of the monarchy. In the preamble of laws passed in 1020, and at several subsequent times during that and the ensuing century, we find only the bishops and magnats recited as present. According to the General Chronicle of Spain, deputies from the Castilian towns formed a part of cortes in 1169; a date not to be rejected as incompatible with their absence in 1178. However, in 1188, the first year of the reign of Alfonso IX., they are expressly mentioned; and from that era were constant and necessary parts of those general assemblies.* It has been seen already that the corporate towns, or districts of Castile, had early acquired considerable importance; arising less from commercial wealth, to which the towns of other kingdoms were indebted for their liberties, than from their utility in keeping up a military organization among the people. To this they probably owe their early reception into the cortes as integrant portions of the legislature, since we do not read that taxes were frequently demanded till the extravagance of later kings, and their alienation of the domain, compelled them to have recourse to the national representatives.

Admission of deputies from towns.

Every chief town of a concejo or corporation ought, perhaps, by the constitution of Castile, to have received its regular writ for the election of deputies to cortes.† But there does not appear to have been, in the best times, any uniform practice in this respect. At the cortes of Burgos, in 1315, we find one hundred and ninety-two representatives from more than ninety towns; at those of Madrid, in 1391, one hundred and twenty-six were sent from fifty towns; and the latter list contains names of several places which do not appear in the former.‡ No deputies were present from the kingdom of Leon in the cortes of Alcala in 1348, where, among many important enactments, the code of the Siete Partidas first obtained a legislative recognition.§

* Defuncto in pace principe, primates totius regni unà cum sacerdotibus successorem regni concilio communi constituant.—Concil. Toletan. IV., c. 75, apud Marina, Teoria de las Cortes, t. ii., p. 2. This important work, by the author of the Ensayo Historico-Critico, quoted above, contains an ample digest of the parliamentary law of Castile, drawn from original, and, in a great degree, unpublished records. I have been favoured with the use of a copy, from which I am the more disposed to make extracts, as the book is likely, through its liberal principles, to become almost as scarce in Spain as in England. Marina's former work (the Ensayo Hist. Crit.) furnishes a series of testimonies (c. 66) to the elective character of the monarchy from Pelayo downwards to the twelfth century.

† Teoria de las Cortes, t. ii, p. 7

* Ensayo Hist. Crit., p. 77. Teoria de las Cortes, t. i., p. 66. Marina seems to have somewhat changed his opinion since the publication of the former work, where he inclines to assert, that the commons were from the earliest times admitted into the legislature. In 1188, the first year of the reign of Alfonso IX., we find positive mention of la muchedumbre de las cibdades è embiados de cada cibdat.

† Teoria de las Cortes, p. 139.

‡ Idem, p. 148. Geddes gives a list of one hundred and twenty-seven deputies from forty-eight towns to the cortes at Madrid in 1390.—Miscellaneous Tracts, vol. iii.

§ Idem, p. 154

We find, in short, a good deal more irregularity than during the same period in England, where the number of electing boroughs varied pretty considerably at every parliament. Yet the cortes of Castile did not cease to be a numerous body and a fair representation of the people till the reign of John II. The first princes of the house of Trastamare had acted in all points with the advice of their cortes. But John II., and still more his son, Henry IV., being conscious of their own unpopularity, did not venture to meet a full assembly of the nation. Their writs were directed only to certain towns; an abuse for which the looseness of preceding usage had given a pretence.* It must be owned that the people bore it in general very patiently. Many of the corporate towns, empoverished by civil warfare and other causes, were glad to save the cost of defraying their deputies' expenses. Thus, by the year 1480, only seventeen cities had retained privilege of representation. A vote was afterward added for Granada, and three more in later times for Palencia, and the provinces of Estremadura and Galicia.† It might have been easy, perhaps, to redress this grievance, while the exclusion was yet fresh and recent. But the privileged towns, with a mean and preposterous selfishness, although their zeal for liberty was at its height, could not endure the only means of effectually securing it, by a restoration of elective franchises to their fellow-citizens. The cortes of 1506 assert, with one of those bold falsifications upon which a popular body sometimes ventures, that "it is established by some laws and by immemorial usage that eighteen cities of these kingdoms have the right of sending deputies to cortes, and no more;" remonstrating against the attempts made by some other towns to obtain the same privilege, which they request may not be conceded. This remonstrance is repeated in 1512.*

From the reign of Alfonso XI., who restrained the government of corporations to an oligarchy of magistrates, the right of electing members of cortes was confined to the ruling body, the bailiffs or regidores, whose number seldom exceeded twenty-four, and whose succession was kept up by close election among themselves.† The people, therefore, had no direct share in the choice of representatives. Experience proved, as several instances in these pages will show, that even upon this narrow basis the deputies of Castile were not deficient in zeal for their country and its liberties. But it must be confessed that a small body of electors is always liable to corrupt influence and to intimidation. John II. and Henry IV. often invaded the freedom of election; the latter even named some of the deputies.‡ Several energetic remonstrances were made in cortes against this flagrant grievance. Laws were enacted, and other precautions devised, to secure the due return of deputies. In the sixteenth century, the evil of course was aggravated. Charles and Philip corrupted the members by bribery.§ Even in 1573 the cortes are bold enough to complain, that creatures of government were sent thither, "who are always held for suspected by the other deputies, and cause disagreement among them."‖

Spiritual and temporal nobility in cortes.

There seems to be a considerable obscurity about the constitution of the cortes, so far as relates to the two higher estates, the spiritual and temporal nobility. It is admitted, that down to the latter part of the thirteenth century, and especially before the introduction of representatives from the commons, they were summoned in considerable numbers But the writer to whom I must almost exclusively refer for the constitutional history of Castile contends, that, from the reign of Sancho IV., they took much less share, and retained much less influence, in the deliberations of cortes.¶ There is a remarkable protest of the Archbishop of Toledo in 1295 against the acts done in cortes, because neither he nor the other prelates had been admitted to their discussions, nor given any consent to their resolutions, although such

* Sepades (says John II. in 1442), que en el ayuntamiento que yo fice en la noble villa de Valladolid . . . . . los procuradores de ciertas cibdades é villas de mis reynos que por mi mandado fueron llamados. This language is repeated as to subsequent meetings, p. 156.

† The cities which retain their representation in cortes, if the present tense may still be used even for these ghosts of ancient liberty in Spain, are Burgos, Toledo (there was a constant dispute for precedence between these two), Leon, Granada, Cordova, Murcia, Jaen, Zamora, Toro, Soria, Valladolid, Salamanca, Segovia, Avila, Madrid, Guadalaxara, and Cuenca. The representatives of these were supposed to vote not only for their immediate constituents, but for other adjacent towns. Thus Toro voted for Palencia and the kingdom of Galicia before they obtained separate votes; Salamanca for most of Estremadura; Guadalaxara for Siguenza and four hundred other towns.—Teoria de las Cortes p. 160. 268

* Teoria de las Cortes, p. 161.
† Idem, p. 86, 197.
‡ Idem, p. 199
§ Idem, p. 213.
‖ Idem p. 207
¶ Idem p. 67

consent was falsely recited in the laws enacted therein.* This protestation is at least a testimony to the constitutional rights of the prelacy, which indeed all the early history of Castile, as well as the analogy of other governments, conspires to demonstrate. In the fourteenth and fifteenth centuries, however, they were more and more excluded. None of the prelates were summoned to the cortes of 1299 and 1301; none either of the prelates or nobles to those of 1370 and 1373, of 1480 and 1505. In all the latter cases, indeed, such members of both orders as happened to be present in the court attended the cortes; a fact which seems to be established by the language of the statutes.† Other instances of a similar kind may be adduced. Nevertheless, the more usual expression in the preamble of laws reciting those summoned to, and present at, the cortes, though subject to considerable variation, seems to imply that all the three estates were, at least nominally and according to legitimate forms, constituent members of the national assembly. And a chronicle mentions, under the year 1406, the nobility and clergy as deliberating separately, and with some difference of judgment, from the deputies of the commons.‡ A theory, indeed, which should exclude the great territorial aristocracy from their place in cortes, would expose the dignity and legislative rights of that body to unfavourable inferences. But it is manifest, that the king exercised very freely a prerogative of calling or omitting persons of both the higher orders at his discretion. The bishops were numerous, and many of their sees not rich; while the same objections of inconvenience applied perhaps to the ricos hombres, but far more forcibly to the lower nobility, the hijosdalgo or caballeros. Castile never adopted the institution of deputies from this order, as in the States General of France and some other countries much less that liberal system of landed representation, which forms one of the most admirable peculiarities in our own constitution. It will be seen hereafter, that spiritual, and even temporal peers, were summoned by our kings with much irregularity; and the disordered state of Castile through almost every reign was likely to prevent the establishment of any fixed usage in this and most other points.

The primary and most essential characteristic of a limited monarchy is, that money can only be levied upon the people through the consent of their representatives. This principle was thoroughly established in Castile; and the statutes which enforce it, the remonstrances which protest against its violation, bear a lively analogy to correspond

Right of taxation.

* Protestamos que desde aquí venimos non fuemos llamados a consejo, ni á los tratados sobre los fechos del reyno, ni sobre las otras cosas que hí fueren tractadas et fechas, et sennaladamente sobre los fechos de los concejos de las hermandades, et de las peticiones que fueron fechas de su parte, et sobre los otorgamentos que les ficieron, et sobre los previlegios que por esta nazon les fueron otorgados; mas ante fuemos ende apartados et estrannados et secados expresamente nos et los otros perlados et ricos homes et los fijosdalgo; et non fue hí cosa fecha con nuestro consejo. Otrosí protestamos por razon de aquello que dice en los previlegios que les otorgaron, que fueren los perlados llamados, et que eran otorgados de consentimiento et de voluntad dellos, que non fuemos hí presentes ni llamados nin fué fecho con nuestra voluntad, nin consentiemos, nin consentimos en ellos, &c., p. 72.

† Teoria de las Cortes, p. 74.

‡ T. ii., p. 234. Marina is influenced by a prejudice in favour of the abortive Spanish constitution of 1812, which excluded the temporal and spiritual aristocracy from a place in the legislature, to imagine a similar form of government in ancient times. But his own work furnishes abundant reasons, if I am not mistaken, to modify this opinion very essentially. A few out of many instances may be adduced from the enacting words of statutes, which we consider in England as good evidences to establish a constitutional theory. Sepades que yo hobé mio acuerdo e mio consejo con mios hermanos e los arzobispos, e los opisbos, e con los ricos homes de Castella, e de Leon, e con homes buenos de las villas de Castella, e de Leon, que fueron conmigo en Valladolit, sobre muchas cosas, &c. (Alfonso X. in 1258.) Mandamos enviar llamar por cartas del rei e nuestras a los infantes e perlados e ricos homes e infanzones e caballeros e homes buenos de las cibdades e de las villas de los reynos de Castilia et de Toledo e de Leon e de las Estramaduras, e de Gallicia e de las Asturias e del Andalusia. (Writ of summons to cortes of Burgos in 1315.) Con acuerdo de los perlados e de los ricos homes e procuradores de las cibdades è villas è logares de los nuestros reynos. (Ordinances of Toro in 1371). Estando hí con él el infante Don Ferrando, &c., e otros perlados e condes e ricos homes e otros del consejo del señor rei, e otros caballeros e escuderos, e los procuradores de las cibdades e villas e logares de sus reynos. (Cortes of 1391.) Los tres estados que de ben venir a las cortes e ayuntamientos segunt se debe facer è es de buena costumbre antigua (Cortes of 1393.) This last passage is apparently conclusive to prove, that three estates, the superior clergy, the nobility, and the commons, were essential members of the Legislature in Castile, as they were in France and England; and one is astonished to read in Marina that no faltaron a ninguna de las formalidades de derecho los monarcas quo no tuvieron por oportuno llamar à cortes para semejantes actos ni al clero ni à la nobleza ni à las personas singulares de uno y otro estado, t. i., p. 69. That great citizen, Jovellanos, appears to have had much wiser notions of the ancient government of his country, as well as of the sort of reformation which she wanted, as we may infer from passages in his Memoria à sus compatriotas, Coruña, 1811 quoted by Marina for the purpose of censure

ng circumstances in the history of our constitution. The lands of the nobility and clergy were, I believe, always exempted from direct taxation; an immunity which perhaps rendered the attendance of the members of those estates in the cortes less regular. The corporate districts or concejos, which, as I have observed already, differed from the communities of France and England by possessing a large extent of territory, subordinate to the principal town, were bound by their charter to a stipulated annual payment, the price of their franchises, called moneda forera.* Beyond this sum nothing could be demanded without the consent of the cortes. Alfonso VIII., in 1177, applied for a subsidy towards carrying on the siege of Cuenca. Demands of money do not however seem to have been very usual before the prodigal reign of Alfonso X. That prince and his immediate successors were not much inclined to respect the rights of their subjects; but they encountered a steady and insuperable resistance. Ferdinand IV., in 1307, promises to raise no money beyond his legal and customary dues. A more explicit law was enacted by Alfonso XI. in 1328, who bound himself not to exact from his people, or cause them to pay any tax, either partial or general, not hitherto established by law, without the previous grant of all the deputies convened to the cortes.† This abolition of illegal impositions was several times confirmed by the same prince. The cortes, in 1393, having made a grant to Henry III., annexed this condition, that "since they had granted him enough for his present necessities, and even to lay up a part for a future exigency, he should swear before one of the archbishops not to take or demand any money, service, or loan, or any thing else of the cities and towns, nor of individuals belonging to them, on any pretence of necessity, until the three estates of the kingdom should first be duly summoned and assembled in cortes according to ancient usage. And if any such letters requiring money have been written, that they shall be *obeyed, and not complied with.*"* His son John II., having violated this constitutional privilege on the allegation of a pressing necessity the cortes, in 1420 presented a long remonstrance, couched in very respectful but equally firm language, wherein they assert, "the good custom founded in reason and in justice, that the cities and towns of your kingdoms shall not be compelled to pay taxes, or requisitions, or other new tribute, unless your highness order it by advice and with the grant of the said cities and towns, and of their deputies for them." And they express their apprehension lest this right should be infringed, because, as they say, "there remains no other privilege or liberty which can be profitable to subjects if this be shaken."† The king gave them as full satisfaction as they desired, that his encroachment should not be drawn into precedent. Some fresh abuses, during the unfortunate reign of Henry IV., produced another declaration in equally explicit language; forming part of the sentence awarded by the arbitrators to whom the differences between the king and his people had been referred at Medina del Campo in 1465.‡ The Catholic kings, as they are eminently called, Ferdinand and Isabella, never violated this part of the constitution; nor did even Charles I., although sometimes refused money by the cortes, attempt to exact it without their consent.◊ In the Recopilacion, or code of Castilian law, published by Philip II.

* Marina, Ensayo Hist. Crit., cap. 158. Teoria de las Cortes, t. ii., p. 387. This is expressed in one of their fueros, or charters: Liberi et ingenui semper maneatis, reddendo mihi et successoribus meis in unoquoque anno in die Pentecostes de unaquaque domo 12 denarios; et, nisi cum bonâ voluntate vestrâ feceritis, nullum alium servitium faciatis.

† De los con echar nin mandar pagar pecho desaforado ninguno, especial nin general, en toda mi tierra, sin ser llamados primeramente a cortes, è otorgado por todos los procuradores que ni vinieren., p. 388

* Obedecidas é non cumplidas. This expression occurs frequently in provisions made against illegal acts of the crown; and is characteristic of the singular respect with which the Spaniards always thought it right to treat their sovereign, while they were resisting the abuses of his authority.

† La buena costumbre è possession fundada en razon è en justicia que las cibdades e villas de vuestros reinos tenian de no ser mandado coger monedas è pedidos nin otro tributo nuevo alguno en los vuestros reinos sin que la vuestra señoria lo faga e ordene de consejo e con otorgamiento de las cibdades è villas de los vuestros reinos è de sus procuradores en su nombre * * * * * no queda otro previlegio ni libertad de que los subditos puedan gozar ni aprovechar quebrantado el sobre dicho, t. iii., p. 30.

‡ Declaramos è ordenamos, que el dicho señor rei nin los otros reyes que despues del fueren non echan nin repartan nin pidan pedidos nin monedas en sus reynos, salvo por gran necessidad, è seyendo primero accordado con los perlados è grandes de sus reynos, e con los otros que a la sazon residieren en su consejo, e seyendo para ello llamados los procuradores de las cibdades e villas de sus reynos, que para las tales cosas se suelen è acostumbran llamar è seyendo per los dichos procuradores otorgado el dicho pedimento è monedas, t. ii., p. 391.

◊ Marina has published two letters from Charles to the city of Toledo, in 1542 and 1548, requesting them to instruct their deputies to consent to a further grant of money, which they had refused to do

we read a positive declaration against arbitrary imposition of taxes, which remained unaltered on the face of the statute-book till the present age.* The law was indeed frequently broken by Philip II ; but the cortes, who retained throughout the sixteenth century a degree of steadiness and courage truly admirable, when we consider their political weakness, did not cease to remonstrate with that suspicious tyrant, and recorded their unavailing appeal to the law of Alfonso XI., "so ancient and just, and which so long time has been used and observed."†

Control of cortes over expenditure.

The free assent of the people by their representatives to grants of money was by no means a mere matter of form. It was connected with other essential rights, indispensable to its effectual exercise ; those of examining public accounts and checking the expenditure. The cortes, in the best times at least, were careful to grant no money until they were assured that what had been already levied on their constituents had been properly employed.‡ They refused a subsidy in 1390, because they had already given so much, and "not knowing how so great a sum had been expended, it would be a great dishonour and mischief to promise any more." In 1406 they stood out a long time, and at length gave only half of what was demanded.§ Charles I. attempted to obtain money, in 1527, from the nobility as well as commons. But the former protested, that "their obligation was to follow the king in war, wherefore to contribute money was to-tall" against their privilege, and for that reason they could not acquiesce in his majesty's request."* The commons also refused upon this occasion. In 1538, on a similar proposition, the superior and lower nobility (los grandes y caballeros) "begged with all humility that they might never hear any more of that matter."†

The contributions granted by cortes were assessed and collected by respectable individuals (hombres buenos) of the several towns and villages.‡ This *repartition*, as the French call it, of direct taxes, is a matter of the highest importance in those countries where they are imposed by means of a gross assessment on a district. The produce was paid to the royal council. It could not be applied to any other purpose than that to which the tax had been appropriated. Thus the cortes of Segovia, in 1407, granted a subsidy for the war against Granada, on condition "that it should not be laid out on any other service except this war;" which they requested the queen and Ferdinand, both regents in John II.'s minority, to confirm by oath. Part, however, of the money remained unexpended ; Ferdinand wished to apply it to his own object of procuring the crown of Aragon ; but the queen first obtained not only a release from her oath by the pope, but the consent of the cortes. They continued to insist upon this appropriation, though ineffectually, under the reign of Charles I.§

The cortes did not consider it beyond the line of their duty, notwithstanding the respectful manner in which they always addressed the sovereign, to remonstrate against profuse expenditure even in his own household. They told Alfonso X., in 1258, in the homely style of that age, that they thought it fitting that the king and his wife should eat at the rate of a hundred and fifty maravedis a day, and no more ; and that the king should order his attendants to eat more moderately than they did.‖ They remonstrated more forcibly against the prodigality of John II. Even in 1559, they spoke with an undaunted Castilian spirit to Philip II. ; "Sir, the expenses of your royal establishment and household are much increased ; and we conceive it would much redound to the good of these kingdoms, that your majesty should direct them to

without leave of their constituents.—Teoria de las Cortes, t. iii., p. 180, 187.

* Idem, t. ii., p. 393.

† En las cortes de año de 70 y en las de 76 pedimos a v. m. fuese servide de no poner nuevos impuestos, rentas, pechos, ni derechos ni otros tributos particulares ni generales sin junta del reyno en cortes, como està dispuerto por lei del señor rei Don Alonso y se significò a v. m. el daño grande que con las nuevas rentas habia rescibido el reino, suplicando a v. m. fuese servido de mandarle aliviar y descargar, y que en lo de adelante se les hiciesse merced de guardar las dichas leyes reales y que no se impusiessen nuevas rentas sin su asistencia ; pues podria v. m. estar satisfecho de que el reino sirve en las cosas necessarias con toda lealtad y hasta ahora no se ha proveido lo susodicho ; y el reino por la obligacion que tiene a pedir a v. m. guarde la dicha lei, y que no solamente han cessado las necessidades de los subditos y naturales de v. m. pero antes crecen de cada dia : vuelve a suplicar a v. m. sea servido concederle lo susodicho, y que las nuevas rentas, pechos y derechos se quiten, y que de aquí adelante se guarde la dicha lei del señor rei don Alonso, como tan antigua y justa y que tanto tiempo se usó y guardó, p. 395. This petition was in 1579.

‡ Marina ii. p. 404 406. § Ibid., p. 409.

* Pero que contribuir a la guerra con ciertas sumas era totalmente opuesto à sus previlegios, y asi que no podrian acomodarse à lo que s. m. deseaba, p. 411.

† Marina, t. ii., p. 411 ‡ Ibid., p. 398.

§ Ibid., p. 412 ‖ Ibid., p. 417

be lowered, both as a relief to your wants, and that all the great men and other subjects of your majesty may take example therefrom, to restrain the great disorder and excess they commit in that respect."*

Forms of the cortes.

The forms of a Castilian cortes were analogous to those of an English parliament in the fourteenth century. They were summoned by a writ almost exactly coincident in expression with that in use among us.† The session was opened by a speech from the chancellor or other chief officer of the court. The deputies were invited to consider certain special business, and commonly to grant money.‡ After the principal affairs were despatched, they conferred together, and having examined the instructions of their respective constituents, drew up a schedule of petitions. These were duly answered one by one, and from the petition and answer, if favourable, laws were afterward drawn up, where the matter required a new law, or promises of redress were given, if the petition related to an abuse or grievance. In the struggling condition of Spanish liberty under Charles I., the crown began to neglect answering the petitions of cortes, or to use unsatisfactory generalities of expression. This gave rise to many remonstrances. The deputies insisted, in 1523, on having answers before they granted money. They repeated the same contention in 1525, and obtained a general law, inserted in the Recopilacion, enacting that the king should answer all their petitions before he dissolved the assembly.§ This, however, was disregarded as before; but the cortes, whose intrepid honesty under Philip II. so often attracts our admiration, continued, as late as 1586, to appeal to the written statute, and lament its violation.‖

Right of cortes in legislation.

According to the ancient fundamental constitution of Castile, the king did not legislate for his subjects without their consent. The code of the Visigoths, called in Spain the Fuero Jusgo, was enacted in public councils, as were also the laws of the early kings of Leon,¶ which appears by the reciting words of their preambles. This consent was originally given only by the higher estates, who might be considered in large sense, as representing the nation, though not chosen by it; but from the end of the twelfth century, by the elected deputies of the commons in cortes. The laws of Alfonso X., in 1258, those of the same prince in 1274, and many others in subsequent times, are declared to be made with the consent (con acuerdo) of the several orders of the kingdom. More commonly, indeed, the preamble of Castilian statutes only recites their advice (consejo); but I do not know that any stress is to be laid on this circumstance. The laws of the Siete Partidas, compiled by Alfonso X., did not obtain any direct sanction till the famous cortes of Alcala, in 1348, when they were confirmed along with several others, forming altogether the basis of the statute law of Spain.* Whether they were in fact received before that time, has been a matter controverted among Spanish antiquaries; and upon the question of their legal validity at the time of their promulgation, depends an important point in Castilian history, the disputed right of succession between Sancho IV. and the infants of La Cerda; the former claiming under the ancient customary law, the latter under the new dispositions of the Siete Partidas. If the king could not legally change the established laws without consent of his cortes, as seems most probable, the right of representative succession did not exist in favour of his grandchildren, and Sancho IV. cannot be considered as an usurper.

It appears upon the whole to have been a constitutional principle, that laws could neither be made nor annulled except in cortes. In 1506, this is claimed by the deputies as an established right.† John

* Señhor, los gastos de vuestro real estado y mesa son muy crescidos, y entendemos que conuerria mucho al bien de estos reinos que v. m. los mandasse moderar así para algun remedio de sus necessidades como para que de v. m. tomen egemplo totos los grandes y caballeros y otros subditos de v. m. en la gran desorden y excessos que hacer en las cosas sobredichas.—Marina, p. 437.

† Ibid., t. i., p. 175; t. iii., p. 103.

‡ Ibid., p. 278. § Ibid., p. 301.

‖ Ibid., p. 288–304.

¶ Ibid. t. ii., p 202. The acts of the cortes of Leon in 1020 run thus: omnes pontifices et abbates et optimates regni Hispaniæ jussu ipsius regis talia decreta decrevimus quæ firmiter teneantur futuris temporibus. So those of Salamanca in 1178: Ego rex Fernandus inter cætera quæ cum episcopis et abbatibus regni nostri et quamplurimis aliis religiosis, cum comitibus terrarum et principibus et rectoribus provinciarum, tcto posse tenenda statuimus apud Salamancam.

* Ensayo Hist. Crit., p. 353. Teoria de las Cortes, t. ii., p. 77. Marina seems to have changed his opinion between the publication of these two works, in the former of which he contends for the previous authority of the Siete Partidas, and in favour of the infants of La Cerda.

† Los reyes establicieron que cuando habiesser de hacer leyes, para que fuessen provechosas à sus reynos y cada provincias fuesen proveidas, se llamasen cortes y procuradores que entendiesen en ellas y por esto se establecio ei que no se hiciesen

the First had long before admitted, that what was done by cortes and general assemblies could not be undone by letters missive, but by such cortes and assemblies alone.* For the kings of Castile had adopted the English practice, of dispensing with statutes by a non obstante clause in their grants. But the cortes remonstrated more steadily against this abuse than our own parliament, who suffered it to remain in a certain degree till the revolution. It was several times enacted upon their petition, especially by an explicit statute of Henry II., that grants and letters patent dispensing with statutes should not be obeyed.† Nevertheless John II., trusting to force or the servility of the judges, had the assurance to dispense explicitly with this very law.‡ The cortes of Valladolid, in 1442, obtained fresh promises and enactments against such an abuse. Philip I. and Charles I. began to legislate without asking the consent of cortes; this grew much worse under Philip II., and reached its height under his successors, who entirely abolished all constitutional privileges.§ In 1555, we find a petition that laws made in cortes should be revoked nowhere else. The reply was such as became that age: "To this we answer, that we shall do what best suits our government." But even in 1619, and still afterward, the patriot representatives of Castile continued to lift an unavailing voice against illegal ordinances, though in the form of very humble petition; perhaps the latest testimonies to the expiring liberties of their country.‖ The denial of exclusive legislative authority to the crown must, however, be understood to admit the legality of particular ordinances, designed to strengthen the king's executive government.¶ These, no doubt, like the royal proclamations in England, extended sometimes very far, and subjected the people to a sort of arbitrary coercion much beyond what our enlightened notions of freedom would consider as reconcilcable to it. But in the middle ages, such temporary commands and prohibitions were not reckoned strictly legislative, and passed, perhaps rightly, for inevitable consequences of a scanty code and short sessions of the national council.

The kings were obliged to swear to the observance of laws enacted in cortes, besides their general coronation oath to keep the laws and preserve the liberties of their people. Of this we find several instances from the middle of the thirteenth century; and the practice continued till the time of John II., who, in 1433 on being requested to swear to the laws then enacted, answered, that he intended to maintain them, and consequently no oath was necessary; an evasion, in which the cortes seem unaccountably to have acquiesced.* The guardians of Alfonso XI. not only swore to observe all that had been agreed on at Burgos in 1315, but consented that, if any one of them did not keep his oath, the people should no longer be obliged to regard or obey him as regent.†

Other rights of the cortes

It was customary to assemble the cortes of Castile for many purposes, besides those of granting money and concurring in legislation. They were summoned in every reign to acknowledge and confirm the succession of the heir apparent; and, upon his accession, to swear allegiance.‡ These acts were however little more than formal, and accordingly have been preserved for the sake of parade, after all the real dignity of the cortes was annihilated. In the fourteenth and fifteenth centuries, they claimed and exercised far more ample powers than our own parliament ever enjoyed. They assumed the right, when questions of regency occurred, to limit the prerogative, as well as to designate the persons who were to use it.§ And the frequent minorities of Castilian kings, which were unfavourable enough to tranquillity and subordination, served to confirm these parliamentary privileges. The cortes were usually consulted upon all material business. A law of Alfonso XI., in 1328, printed in the Recopilacion, or code published by Philip II., declares, "Since, in the arduous affairs of our kingdom, the counsel of our natural subjects is necessary, especially of the deputies from our cities and towns, therefore we ordain and command that on such great occasions the cortes shall be assembled, and counsel shall be taken of the three estates of our kingdoms, as the kings our forefathers have been used to do."‖ A cortes of John II., in 1419, claimed this

ni renovasen leyes sino en cortes.—Teoria de las Cortes, t. ii., p. 218.

* Lo que es fecho por cortes è por ayuntamientos que non se pueda disfacer por las tales cartas, salvo por ayuntamientos è cortes, p. 215.

† Idem, p. 215. ‡ Idem, p. 216; t. iii., p. 40.

§ Idem, t. ii., p. 218.

‖ Ha suplicado el reino á v. m. no se promulguen nuevas leyes, ni en todo ni en parte las antiguas se alteren sin que sea por cortes.... y por ser de tanta importancia vuelve el reino á suplicarlo humilmente à v. m., p. 220.

¶ Idem, p 207

* Teoria de las Cortes, t. i., p. 306.

† Id., t. iii., p. 62. ‡ Id., t. i., p. 33; t. ii., p. 24

§ Id., p 230. ‖ Id., t. i., p. 31.

right of being consulted in all matters of importance, with a warm remonstrance against the alleged violation of so wholesome a law by the reigning prince; who answered that, in weighty matters, he had acted, and would continue to act, in conformity to it.* What should be intended by great and weighty affairs, might be not at all agreed upon by the two parties; to each of whose interpretations these words gave pretty full scope. However, the current usage of the monarchy certainly permitted much authority in public deliberations to the cortes. Among other instances, which indeed will continually be found in the common civil histories, the cortes of Orcano, in 1469, remonstrate with Henry IV. for allying himself with England rather than France, and give, as the first reason of complaint, that, "according to the laws of your kingdom, when the kings have any thing of great importance in hand, they ought not to undertake it without advice and knowledge of the chief towns and cities of your kingdom."† This privilege of general interference was asserted, like other ancient rights, under Charles, whom they strongly urged, in 1548, not to permit his son Philip to depart out of the realm.‡ It is hardly necessary to observe, that in such times they had little chance of being regarded.

Council of Castile.

The kings of Leon and Castile acted, during the interval of the cortes, by the advice of a smaller council, answering, as it seems, almost exactly to the king's ordinary council in England. In early ages, before the introduction of the commons, it is sometimes difficult to distinguish this body from the general council of the nation; being composed, in fact, of the same class of persons, though in smaller numbers. A similar difficulty applies to the English history. The nature of their proceedings seems best to ascertain the distinction. All executive acts, including those ordinances which may appear rather of a legislative nature, all grants and charters, are declared to be with the assent of the court (curia), or of the magnats of the palace, or of the chiefs or nobles.§ This privy council was an essential part of all European monarchies. And, though the sovereign might be considered as free to call in the advice of whomsoever he pleased, yet, in fact, the princes of the blood and most powerful nobility had anciently a constitutional right to be members of such a council; so that it formed a very material check upon his personal authority.

The council underwent several changes, in progress of time, which it is not necessary to enumerate. It was justly deemed an important member of the constitution, and the cortes showed a laudable anxiety to procure its composition in such a manner as to form a guarantee for the due execution of laws after their own dissolution. Several times, especially in minorities, they even named its members, or a part of them; and in the reigns of Henry III. and John II., they obtained the privilege of adding a permanent deputation, consisting of four persons, elected out of their own body, annexed, as it were, to the council, who were to continue at the court during the interval of cortes, and watch over the due observance of the laws.* This deputation continued, as an empty formality, in the sixteenth century. In the council, the king was bound to sit personally three days in the week. Their business, which included the whole executive government, was distributed with considerable accuracy into what might be despatched by the council alone, under their own seals and signatures, and what required the royal seal.† The consent of this body was necessary for almost every act of the crown, for pensions or grants of money, ecclesiastical and political promotions, and for charters of pardon, the easy concession of which was a great encouragement to the homicides so usual in those ages, and was restrained by some of our own laws.‡ But the council did not exercise any judicial authority, if we may believe the well-informed author from whom I have learned these particulars; unlike, in this, to the ordinary council of the kings of England. It was not until the days of Ferdinand and Isabella that this, among other innovations, was introduced.§

Administration of justice.

Civil and criminal justice was administered, in the first instance, by the alcaldes, or municipal judges of towns; elected within themselves originally by the community at large, but in subsequent times by the governing

* Teoria de las Cortes, t. i., p. 34.

† Porque, segunt leyes de nuestros reynos, cuando los reyes han de facer alguna cosa de gran importancia. non lo deben facer sin consejo é sabiduria de las ciudades é villas principales devuestros reynos.—Idem, t. ii., p. 241.

‡ Idem, t. iii., p. 183.

§ Cum assensu magnatum palatii: Cum consilio curiæ meæ: Cum consilio et beneplacito omnium principum meorum, nullo contradicente nec reclamante p. 325

* Teoria de las Cortes, t. ii., p. 346.

† Idem, p. 354. ‡ Idem, p 360, 362, 372

§ Idem, p. 375, 379.

body. In other places, a lord possessed the right of jurisdiction by grant from the crown, not, what we find in countries where the feudal system was more thoroughly established, as incident to his own territorial superiority. The kings, however, began in the thirteenth century to appoint judges of their own, called corregidores, a name which seems to express concurrent jurisdiction with regidores, or ordinary magistrates.* The cortes frequently remonstrated against this encroachment. Alfonso XI. consented to withdraw his judges from all corporations by which he had not been requested to appoint them.† Some attempts to interfere with the municipal authorities of Toledo produced serious disturbances under Henry III. and John II.‡ Even where the king appointed magistrates at a city's request, he was bound to select them from among the citizens.§ From this immediate jurisdiction an appeal lay to the adelantado, or governor of the province, and from thence to the tribunal of royal alcaldes.‖ The latter, however, could not take cognizance of any cause depending before the ordinary judges; a contrast to the practice of Aragon, where the justiciary's right of evocation (juris firma) was considered as a principal safeguard of public liberty.¶ As a court of appeal, the royal alcaldes had the supreme jurisdiction. The king could only cause their sentence to be revised, but neither alter nor revoke it.** They have continued to the present day as a criminal tribunal; but civil appeals were transferred by the ordinances of Toro in 1371 to a new court, styled the king's audience, which, though deprived under Ferdinand and his successors of part of its jurisdiction, still remains one of the principal judicatures in Castile.††

Violent actions of some kings of Castile.

No people in a half-civilized state of society have a full practical security against particular acts of arbitrary power. They were more common, perhaps, in Castile than in any other European monarchy which professed to be free. Laws indeed were not wanting to protect men's lives and liberties, as well as their properties. Ferdinand IV., in 1299, agreed to a petition that "justice shall be executed impartially according to law and right and that no one shall be put to death, or imprisoned, or deprived of his possessions without trial, and that this be better observed than heretofore."* He renewed the same law in 1307. Nevertheless, the most remarkable circumstance of this monarch's history was a violation of so sacred and apparently so well established a law. Two gentlemen having been accused of murder, Ferdinand, without waiting for any process, ordered them to instant execution. They summoned him with their last words to appear before the tribunal of God in thirty days; and his death within the time, which has given him the surname of the Summoned, might, we may hope, deter succeeding sovereigns from iniquity so flagrant. But from the practice of causing their enemies to be assassinated, neither law nor conscience could withhold them. Alfonso XI. was more than once guilty of this crime. Yet he too passed an ordinance, in 1325, that no warrant should issue for putting any one to death, or seizing his property, till he should be duly tried by course of law. Henry II. repeats the same law in very explicit language.† But the civil history of Spain displays several violations of it. An extraordinary prerogative of committing murder appears to have been admitted, in early times, by several nations who did not acknowledge unlimited power in their sovereign.‡ Before any regular police was established, a powerful criminal might have been secure from all punishment, but for a notion, as barbarous as any which it served to counteract, that he could be lawfully killed by the personal mandate of the king. And the frequent attendance of sovereigns in their courts of judicature might lead men not accustomed to consider the indispensable necessity of legal forms, to confound an

* Alfonso X. says: Ningun ome sea osado juzgar pleytos, se no fuere alcalde puesto por el rey. —Teoria de las Cortes, fol. 27. This seems an encroachment on the municipal magistrates.

† Teoria de las Cortes, p. 251.

‡ Idem, p. 255. Mariana, l. xx., c. 13.

§ Idem, p. 255. ‖ Idem, p. 266.

¶ Idem, p. 260. ** Idem, p. 287, 304.

†† Idem, p. 292. 302.

* Que mandase facer la justicia en aquellos que la merecen comunalmente con fuero é con derecho; é los homes que non sean muertos nin presos nin tomados lo que han sin ser oidos por derecho ó por fuero de aquel logar do acaesciere, é que sea guardado mejor que se guardó fasta aquí.—Marina, Ensayo Hist. Critico, p. 148.

† Que non mandemos matar nin prender nin lisiar nin despechar nin tomar à alguno ninguna cosa de lo suyo, sin ser anté llamado é oido é vencido por fuero é por derecho, por querella nin por querel las que a nos fuesen dadas, segunt que esto está ordenado por el rei don Alonso nuestro padre.—Teoria de las Cortes, t. ii., p. 287.

‡ Si quis hominem per jussionem regis vel ducis sui occiderit, non requiratur ei, nec sit fidosus, quia jussio domini sui fuit, et non potuit contradicere jussionem.—Leges Bajuvariorum, tit. ii., in Baluz. Capitularibus.

act of assassination with the execution of justice.

Though it is very improbable that the nobility were not considered as essential members of the cortes, they certainly attended in smaller numbers than we should expect to find from the great legislative and deliberative authority of that assembly. This arose chiefly from the lawless spirit of that martial aristocracy, which placed less confidence in the constitutional methods of resisting arbitrary encroachment than in its own armed combinations.* Such confederacies to obtain redress of grievances by force, of which there were five or six remarkable instances, were called *Hermandad* (brotherhood or union), and though not so explicitly sanctioned as they were by the celebrated Privilege of Union in Aragon, found countenance in a law of Alfonso X., which cannot be deemed so much to have voluntarily emanated from that prince as to be a record of original rights possessed by the Castilian nobility. "The duty of subjects towards their king," he says, "enjoins them not to permit him knowingly to endanger his salvation, nor to incur dishonour and inconvenience in his person or family, nor to produce mischief to his kingdom. And this may be fulfilled in two ways; one by good advice, showing him the reason wherefore he ought not to act thus; the other by deeds, seeking means to prevent his going on to his own ruin, and putting a stop to those who give him ill counsel, forasmuch as his errors are of worse consequence than those of other men, it is the bounden duty of subjects to prevent his committing them."† To this law the insurgents appealed in their coalition against Alvaro de Luna; and indeed we must confess, that however just and admirable the principles which it breathes, so general a license of rebellion was not likely to preserve the tranquillity of a kingdom. The deputies of towns, in a cortes of 1445, petitioned the king to declare that no construction should be put on this law inconsistent with the obedience of subjects towards their sovereign; a request to which of course he willingly acceded.

Confederacies of the nobility.

Castile, it will be apparent, bore a closer analogy to England in its form of civil polity than France or even Aragon. But the frequent disorders of its government, and a barbarous state of manners, rendered violations of law much more continual and flagrant than they were in England under the Plantagenet dynasty. And besides these practical mischiefs there were two essential defects in the constitution of Castile, through which perhaps it was ultimately subverted. It wanted those two brilliants in the coronet of British liberty, the representation of freeholders among the commons, and trial by jury. The cortes of Castile became a congress of deputies from a few cities, public-spirited indeed and intrepid, as we find them in bad times, to an eminent degree, but too much limited in number, and too unconnected with the territorial aristocracy, to maintain a just balance against the crown. Yet, with every disadvantage, that country possessed a liberal form of government, and was animated with a noble spirit for its defence. Spain, in her late memorable though short resuscitation, might well have gone back to her ancient institutions, and perfected a scheme of policy which the great example of England would have shown to be well adapted to the security of freedom. What she did, or rather attempted instead, I need not recall. May her next effort be more wisely planned and more happily terminated![*]

Though the kingdom of Aragon was very inferior in extent to that of Castile, yet the advantages of a better form of government and wiser sovereigns, with those of industry and commerce along a line of seacoast, rendered it almost equal in importance. Castile rarely intermeddled in the civil dissensions of Aragon; the kings of Aragon frequently carried their arms into the heart of Castile. During the sanguinary outrages of Peter the Cruel, and the stormy revolutions which ended in establishing the house of Trastamare, Aragon was not indeed at peace, nor altogether well governed; but her political consequence rose in the eyes of Europe through the long reign of the ambitious and wily Peter IV., whose sagacity and good fortune redeemed, according to the common notions of mankind, the iniquity with which he stripped his relation, the King of Majorca, of the Balearic Islands, and the constant perfidiousness of his character. I have mentioned in another place the Sicilian war, prosecuted with so much eagerness for many years by Peter III. and his son Alfonso III. After this object was relinquished, James II. undertook an enterprise less splendid, but not much less difficult, the con-

Affairs of Aragon.

* Teoria de las Cortes, t. ii., p. 400

† Ensayo Hist. Critico. p. 312.

* The first edition of this work was published in 1818.

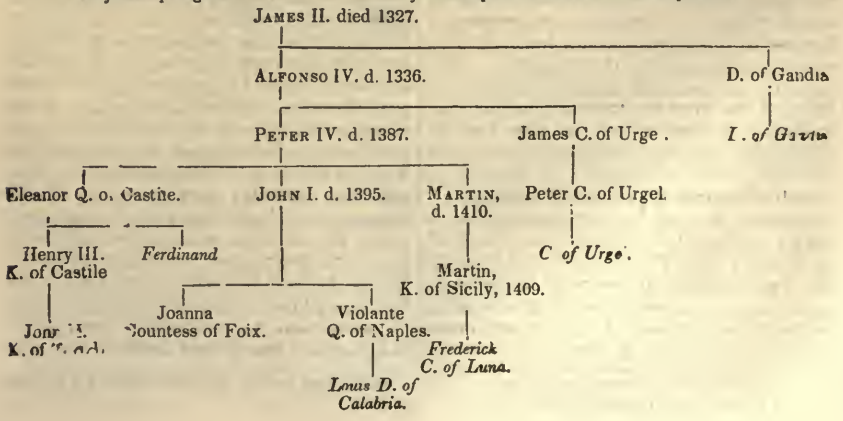
quest of Sardinia. That island, long accustomed to independence, cost an incredible expense of blood and treasure to the kings of Aragon during the whole fourteenth century. It was not fully subdued till the commencement of the next, under the reign of Martin.

Disputed succession after the death of Martin.

At the death of Martin, king of Aragon, in 1410, a memorable question arose as to the right of succession. Though Petronilla, daughter of Ramiro II., had reigned in her own right from 1137 to 1172, an opinion seems to have gained ground from the thirteenth century, that females could not inherit the crown of Aragon. Peter IV. had excited a civil war by attempting to settle the succession upon his daughter, to the exclusion of his next brother. The birth of a son about the same time suspended the ultimate decision of this question; but it was tacitly understood that what is called the Salique-law ought to prevail.* Accordingly, on the death of John I., in 1395, his two daughters were set aside in favour of his brother Martin, though not without opposition on the part of the elder, whose husband, the Count of Foix, invaded the kingdom, and desisted from his pretension only through want of force. Martin's son, the King of Sicily, dying in his father's lifetime, the nation was anxious that the king should fix upon his successor, and would probably have acquiesced in his choice. But his dissolution occurring more rapidly than was expected, the throne remained absolutely vacant. The Count of Urgel had obtained a grant of the lieutenancy, which was the right of the heir apparent. This nobleman possessed an extensive territory in Catalonia, bordering on the Pyrenees. He was grandson of James, next brother to Peter IV., and, according to our rules of inheritance, certainly stood in the first place. The other claimants were the Duke of Gandia, grandson of James II., who, though descended from a more distant ancestor, set up a claim founded on proximity to the royal stock, which in some countries was preferred to a representative title; the Duke of Calabria, son of Violante, younger daughter of John I. (the Countess of Foix being childless); Frederick, count of Luna, a natural son of the younger Martin, king of Sicily, legitimated by the pope, but with a reservation excluding him from royal succession; and finally, Ferdinand, infant of Castile, son of the late king's sister.† The Count of Urgel was favoured in general by the Catalans, and he seemed to have a powerful support in Antonio de Luna, a baron of Aragon, so rich that he might go through his own estate from France to Castile. But this apparent superiority frustrated his hopes. The justiciary and other leading Aragonese were determined not to suffer this great constitutional question to be decided by an appeal to force, which might sweep away their liberties in the struggle. Urgel, confident of his right, and surrounded by men of ruined fortunes, was unwilling to submit his pretensions to a civil tribunal. His adherent, Antonio de Luna, committed an extraordinary

* Zurita, t. ii., f. 188. It was pretended that women were excluded from the crown in England as well as France: and this analogy seems to have had some influence in determining the Aragonese to adopt a Salique-law.

† The subjoined pedigree will show more clearly the respective titles of the competitors:—



outrage, the assassination of the Archbishop of Saragosa, which alienated the minds of good citizens from his cause. On the other hand, neither the Duke of Gandia, who was very old,* nor the Count of Luna, seemed fit to succeed. The party of Ferdinand, therefore, gained ground by degrees. It was determined, however, to render a legal sentence. The cortes of each nation agreed upon the nomination of nine persons, three Aragonese, three Catalans, and three Valencians, who were to discuss the pretensions of the several competitors, and, by a plurality of six votes, to adjudge the crown. Nothing could be more solemn, more peaceful, nor, in appearance, more equitable, than the proceedings of this tribunal. They summoned the claimants before them, and heard them by counsel. One of these, Frederick of Luna, being ill defended, the court took charge of his interests, and named other advocates to maintain them. A month was passed in hearing arguments; a second was allotted to considering them; and, at the expiration of the prescribed time, it was announced to the people, by the mouth of St. Vincent Ferrier, that Ferdinand of Castile had ascended the throne.†

Decision in favour of Ferdinand of Castile.

[A. D. 1412.] In this decision it is impossible not to suspect that the judges were swayed rather by politic considerations than a strict sense of hereditary right. It was therefore by no means universally popular, especially in Catalonia, of which principality the Count of Urgel was a native; and perhaps the great rebellion of the Catalans fifty years afterward may be traced to the disaffection which this breach, as they thought, of the lawful succession had excited. Ferdinand however was well received in Aragon. The cortes generously recommended the Count of Urgel to his favour, on account of the great expenses he had incurred in prosecuting his claim. But Urgel did not wait the effect of this recommendation. Unwisely attempting a rebellion with very inadequate means, he lost his estates, and was thrown for life into prison. [A. D. 1416.] Ferdinand's successor was his son Alfonso V., more distinguished in the history of Italy than of Spain. For all the latter years of his life, he never quitted the kingdom that he had acquired by his arms: and, enchanted by the delicious air of Naples, intrusted the government of his patrimonial territories to the care of a brother and an heir. [A. D. 1458.] John II., upon whom they devolved by the death of Alfonso without legitimate progeny, had been engaged during his youth in the turbulent revolutions of Castile, as the head of a strong party that opposed the domination of Alvaro de Luna. [A. D. 1420.] By marriage with the heiress of Navarre, he was entitled, according to the usage of those times, to assume the title of king, and administration of government during her life. But his ambitious retention of power still longer produced events which are the chief stain on his memory. Charles, prince of Viana, was, by the constitution of Navarre, entitled to succeed his mother. [A. D. 1442.] She had requested him in her testament not to assume the government without his father's consent. That consent was always withheld. The prince raised what we ought not to call a rebellion; but was made prisoner, and remained for some time in captivity. John's ill disposition towards his son was exasperated by a stepmother, who scarcely disguised her intention of placing her own child on the throne of Aragon at the expense of the eldest-born. After a life of perpetual oppression, chiefly passed in exile or captivity, the Prince of Viana died in Catalonia, at a moment when that province was in open insurrection upon his account. [A. D. 1461.] Though it hardly seems that the Catalans had any more general provocations, they persevered for more than ten years with inveterate obstinacy in their rebellion; offering the sovereignty first to a prince of Portugal, and afterward to Regnier, duke of Anjou, who was destined to pass his life in unsuccessful competition for king

Alfonso V

John II.

* This Duke of Gandia died during the interregnum. His son, though not so objectionable on the score of age, seemed to have a worse claim; yet he became a competitor.

† Biancæ Commentaria, in Schotti Hispania Illustrata, t. ii. Zurita, t. iii. f. 1–74. Vincent Ferrier was the most distinguished churchman of his time in Spain. His influence, as one of the nine judges, is said to have been very instrumental in procuring the crown for Ferdinand. Five others voted the same way; one for the Count of Urgel; one doubtfully between the Count of Urgel and Duke of Gandia; the ninth declined to vote.—Zurita, t. iii., f. 71. It is curious enough, that John, king of Castile, was altogether disregarded; though his claim was at least as plausible as that of his uncle Ferdinand. Indeed, upon the principles of inheritance to which we are accustomed, Louis, duke of Calabria, had a prior right to Ferdinand, admitting the rule which it was necessary for both of them to establish; namely, that a right of succession might be transmitted through females, which females could not personally enjoy. This, as is well known, had been advanced in the preceding age by Edward III. as the foundation of his claim to the crown of France.

doms. The King of Aragon behaved with great clemency towards these insurgents on their final submission.

Constitution of Aragon.

It is consonant to the principle of this work, to pass lightly over the common details of history, in order to fix the reader's attention more fully on subjects of philosophical inquiry. Perhaps in no European monarchy, except our own, was the form of government more interesting than in Aragon, as a fortunate temperament of law and justice with the royal authority. So far as any thing can be pronounced of its earlier period, before the capture of Saragosa in 1118, it was a kind of regal aristocracy, where a small number of powerful barons elected their sovereign on every vacancy, though, as usual in other countries, out of one family; and considered him as little more than the chief of their confederacy.* These were the ricos hombres or barons, the first order of the state. Among these the kings of Aragon, in subsequent times, as they extended their dominions, shared the conquered territory in grants of honours on a feudal tenure.† For this system was fully established in the kingdom of Aragon. A rico hombre, as we read in Vitalis, bishop of Huesca, about the middle of the thirteenth century,‡ must hold of the king an honour or barony capable of supporting more than three knights: and this he was bound to distribute among his vassals in military fiefs. Once in the year he might be summoned with his feudataries to serve the sovereign for two months (Zurita says three); and he was to attend the royal court, or general assembly, as a counsellor, whenever called upon, assisting in its judicial as well as deliberative business. In the towns and villages of his barony he might appoint bailiffs to administer justice and receive penalties; but the higher criminal jurisdiction seems to have been reserved to the crown. According to Vitalis, the king could divest these ricos hombres of their honours at pleasure, after which they fell into the class of mesnadaries, or mere tenants in chief. But if this were constitutional in the reign of James I., which Blancas denies, it was not long permitted by that high-spirited aristocracy. By the General Privilege, or Charter of Peter III., it is declared that no barony can be taken away without a just cause and legal sentence of the justiciary and council of barons.* And the same protection was extended to the vassals of the ricos hombres.

Originally a sort of regal aristocracy.

Privileges of the ricos hombres or barons.

Below these superior nobles were the mesnadaries, corresponding to our mere tenants in chief, holding estates not baronial immediately from the crown; and the military vassals of the high nobility, the knights and *infanzones;* a word which may be rendered by gentlemen. These had considerable privileges in that aristocratic government they were exempted from all taxes, they could only be tried by the royal judges for any crime; and offences committed against them were punished with additional severity.† The ignoble classes were, as in other countries, the burgesses of towns, and the villeins or peasantry. The peasantry seem to have been subject to territorial servitude, as in France and England. Vitalis says, that some villeins were originally so unprotected, that, as he expresses it, they might be divided into pieces by the sword among the sons of their masters: till they were provoked to an insurrection, which ended in establishing certain stipulations, whence they obtained the denomination of villeins *de parada*, or of convention ‡

Lower nobility.

Burgesses and peasantry.

Though from the twelfth century the principle of hereditary succession to the throne superseded, in Aragon as well as Castile, the original right of choosing a sovereign within the royal family, it was still founded upon one more sacred and fundamental, that of compact. No king of Aragon was entitled to assume that name until he had taken a coronation oath, administered by the justiciary at Saragosa, to observe the laws and liber

Liberties of the Aragonese kingdom.

* Alfonso III. complained that his barons wanted to bring back old times, quando havia en el reyno tantos reyes como ricos hombres.—Biancæ Commentaria, p. 737. The form of election supposed to have been used by these bold barons is well known. "We, who are as good as you, choose you for our king and lord, provided that you observe our laws and privileges, and if not, not." But I do not much believe the authenticity of this form of words.—See Robertson's Charles V., vol. i., note 31. It is, however, sufficiently agreeable to the spirit of the old government.

† Los ricos hombres, por los feudos que tenian del rey, eran obligados de seguir al rey, si yva en persona a la guerra, y residir en ella tres meses en cadaun año.—Zurita, tom. i., fol. 43. (Saragosa, 1610.) A fief was usually called in Aragon an honour, que en Castilla llamavan tierra, y en el principado de Cataluña feudo, fol. 46.

‡ I do not know whether this work of Vitalis has been printed; but there are large extracts from it in Blancas's history, and also in Du Cange, under the words Infancia, Mesnadarius, &c. Several illustrations of these military tenures may be found in the Fueros de Aragon, especially lib. 7

* Biancæ Comm., p. 730.

† Idem, p. 732. ‡ Idem, p. 729

ties of the realm.* Alfonso III., in 1285, being in France at the time of his father's death, named himself king in addressing the states, who immediately remonstrated on this premature assumption of his title, and obtained an apology.† Thus too Martin, having been called to the crown of Aragon by the cortes in 1395, was specially required not to exercise any authority before his coronation.‡

Blancas quotes a noble passage from the acts of cortes in 1451. "We have always heard of old time, and it is found by experience, that, seeing the great barrenness of this land, and the poverty of the realm, if it were not for the liberties thereof, the folk would go hence to live and abide in other realms, and lands more fruitful."§ This high spirit of freedom had long animated the Aragonese After several contests with the crown in the reign of James I., not to go back to earlier times, they compelled Peter III., in 1283, to grant a law, called the General Privilege, the Magna Charta of Aragon, and perhaps a more full and satisfactory basis of civil liberty than our own. It contains a series of provisions against arbitrary tallages, spoliations of property, secret process after the manner of the Inquisition in criminal charges, sentences of the justiciary without assent of the cortes, appointment of foreigners or Jews to judicial offices, trials of accused persons in places beyond the kingdom, the use of torture, except in charges of falsifying the coin, and the bribery of judges. These are claimed as the ancient liberties of their country. "Absolute power (mero imperio è mixto), it is declared never was the constitution of Aragon, nor of Valencia, nor yet of Ribagorça, nor shall there be in time to come any innovation made; but only the law, custom, and privilege which has been anciently used in the aforesaid kingdoms."*

General Privilege of 1283

The concessions extorted by our ancestors from John, Henry III., and Edward I., were secured by the Union. only guarantee those times could afford, the determination of the barons to enforce them by armed confederacies. These, however, were formed according to emergencies, and, except in the famous commission of twenty-five conservators of Magna Charta, in the last year of John, were certainly unwarranted by law. But the Aragonese established a positive right of maintaining their liberties by arms. This was contained in the Privilege of Union granted by Alfonso III. in 1287, after a violent conflict with his subjects; but which was afterward so completely abolished, and even eradicated from the records of the kingdom, that its precise words have never been recovered.† According to Zurita, it consisted of two articles: first, that, in the case of the king's proceeding forcibly against any member of the union without previous sentence of the justiciary, the rest should be absolved from their allegiance; secondly, that he should hold cortes every year in Saragosa.‡ During the two subsequent reigns of James II. and Alfonso IV., little pretence seems to have been given for the exercise of this right. But dissensions breaking out under Peter IV. in 1347, rather on account of his attempt to settle the crown upon his daughter than of any specific public grievances, the nobles had recourse to the union, that last voice, says Blancas, of an almost expiring state, full of weight and dignity, to chastise the presumption of kings.§ They assembled at Saragosa, and used a remarkable seal for all their public instruments, an engraving from which may be seen in the historian

Privilege of Union

Revolt against Peter IV

* Zurita, Anales de Aragon, t. i., fol. 104; t. iii., fol. 76.

† Blancæ Comm., p. 661. They acknowledged, at the same time, that he was their natural lord, and entitled to reign as lawful heir to his father—so oddly were the hereditary and elective titles jumbled together.—Zurita, t. i., fol. 303.

‡ Zurita, t. ii., fol. 424.

§ Siempre havemos oydo dezir antigament, è se troba por esperiencia, que attendida la grand sterilidad de aquesta tierra, è probreza de aqueste regno, si non fues por las libertades de aquel, se yrian a bivir, y habitar las gentes a otros regnos, è tierras mas frutieras, p. 571. Aragon was, in fact, a poor country, barren and ill-peopled. The kings were forced to go to Catalonia for money, and indeed were little able to maintain expensive contests. The wars of Peter IV. in Sardinia, and of Alfonso V. with Genoa and Naples, empoverished their people. A hearth-tax having been imposed in 1404, it was found that there were 12,683 houses in Aragon, which, according to most calculations, will not give much more than 200,000 inhabitants. In 1129, a similar tax being laid on, it is said that the number of houses was diminished in consequence of war.—Zurita, t. iii., fol. 189. It contains present between 600,000 and 700,000 inhabitants.

* Fueros de Aragon, fol. 9 Zurita, t. i. fol. 265.

† Blancas says that he had discovered a copy of the Privilege of Union in the archives of the see of Tarragona, and would gladly have published it but for his deference to the wisdom of former ages which had studiously endeavoured to destroy a recollection of that dangerous law.—Ibid., p. 662

‡ Ibid., t. i., f 322.

§ Priscam illa n Unionis, quasi morientis reipublicæ extremam vocem, auctoritatis et gravitatis plenam, regum insolentiæ apertum vindicem excitârunt, summâ ac singulari bonorum omnium consensione, p. 669. It is remarkable that such strong language should have been tolerated under Philip II

I have just quoted. It represents the king sitting on his throne, with the confederates kneeling in a suppliant attitude around, to denote their loyalty, and unwillingness to offend. But in the background tents and lines of spears are discovered, as a hint of their ability and resolution to defend themselves. The legend is Sigillum Unionis Aragonum. This respectful demeanour towards a sovereign against whom they were waging war, reminds us of the language held out by our Long Parliament before the Presbyterian party was overthrown. And although it has been lightly censured as inconsistent and hypocritical, this tone is the safest that men can adopt, who, deeming themselves under the necessity of withstanding the reigning monarch, are anxious to avoid a change of dynasty, or subversion of their constitution. These confederates were defeated by the king at Epila, in 1348.* But his prudence and the remaining strength of his opponents inducing him to pursue a moderate course, there ensued a more legitimate and permanent balance of the constitution from this victory of the royalists. The Privilege of Union was abrogated, Peter himself cutting to pieces with his sword the original instrument. But, in return, many excellent laws for the security of the subject were enacted ;† and their preservation was intrusted to the greatest officer of the kingdom, the justiciary, whose authority and pre-eminence may in a great degree be dated from this period ‡ That watchfulness over public liberty, which originally belonged to the aristocracy of ricos hombres, always apt to thwart the crown, or to oppress the people, and which was afterward maintained by the dangerous privilege of union, became the duty of a civil magistrate, accustomed to legal rules, and responsible for his actions, whose office and functions are the most pleasing feature in the constitutional history of Aragon.

Privilege of Union abolished. Other provisions instituted.

The justiza or justiciary of Aragon has been treated by some writers as a sort of anomalous magistrate, created originally as an intermediate power between the king and people, to watch over the exercise of royal authority. But I do not perceive that his functions were in any essential respect, different from those of the chief justice of England, divided, from the time of Edward I., among the judges of the King's Bench. We should undervalue our own constitution by supposing that there did not reside in that court as perfect an authority to redress the subject's injuries, as was possessed by the Aragonese magistrate. In the practical exercise, indeed, of this power, there was an abundant difference. Our English judges, more timid and pliant, left to the remonstrances of parliament that redress of grievances which very frequently lay within the sphere of their jurisdiction. There is, I believe, no recorded instance of a habeas corpus granted in any case of illegal imprisonment by the crown or its officers during the continuance of the Plantagenet dynasty. We shall speedily take notice of a very different conduct in Aragon.

Office of Justiciary

The office of justiciary, whatever conjectural antiquity some have assigned to it, is not to be traced beyond the capture of Saragosa in 1118, when the series of magistrates commences.* But for a great length of time they do not appear to have been particularly important; the judicial authority residing in the council of ricos hombres, whose suffrages the justiciary collected, in order to pronounce their sentence rather than his own. A passage in Vitalis, bishop of Huesca, whom I have already mentioned, shows this to have been the practice during the reign of James I.† Gradually, as notions of liberty became more definite, and laws more numerous, the reverence paid to their permanent interpreter grew stronger; and there was fortunately a succession of prudent and just men in that high office, through whom it acquired dignity and stable influence. Soon after the ac

* Zurita observes that the battle of Epila was the last fought in defence of public liberty, for which it was held lawful of old to take up arms, and resist the king, by virtue of the Privileges of Union. For the authority of the justiciary being afterward established, the former contentions and wars came to an end; means being found to put the weak on a level with the powerful, in which consists the peace and tranquillity of all states; and from thence the name of Union was, by common consent, proscribed, t. ii., fol. 226. Blancas also remarks, that nothing could have turned out more advantageous to the Aragonese than their ill-fortune at Epila.

† Fueros de Aragon. De iis, quæ Dominus rex, fol. 14, et alibi passim.

‡ Blanc. Comm., p. 671, 811 Zurita, t. ii., fol. 69.

* Biancæ Comment., p. 638.

† Id., p. 722. Zurita indeed refers the justiciary's pre-eminence to an earlier date; namely, the reign of Peter II., who took away a great part of the local jurisdictions of the ricos hombres, t. i., fol 102. But, if I do not misunderstand the meaning of Vitalis, his testimony seems to be beyond dispute. By the General Privilege of 1283, the justiciary was to advise with the ricos hombres in all cases where the king was a party against any of his subjects.—Zurita, f. 281 See also f. 180

cession of James II., on some dissensions arising between the king and his barons, he called in the justiciary as a mediator, whose sentence, says Blancas, all obeyed.* At a subsequent time in the same reign, the military orders, pretending that some of their privileges were violated, raised a confederacy or union against the king. James offered to refer the dispute to the justiciary, Ximenes Salanova, a man of eminent legal knowledge. The knights resisted his jurisdiction, alleging the question to be of spiritual cognizance. He decided it, however, against them in full cortes at Saragosa, annulled their league, and sentenced the leaders to punishment.† It was adjudged also that no appeal could lie to the spiritual court from a sentence of the justiciary passed with assent of the cortes. James II. is said to have frequently sued his subjects in the justiciary's court, to show his regard for legal measures; and during the reign of this good prince, its authority became more established.‡ Yet it was not perhaps looked upon as fully equal to maintain public liberty against the crown, till, in the cortes of 1348, after the Privilege of Union was for ever abolished, such laws were enacted, and such authority given to the justiciary, as proved eventually a more adequate barrier against oppression than any other country could boast. All the royal as well as territorial judges were bound to apply for his opinion in case of legal difficulties arising in their courts, which he was to certify within eight days. By subséquent statutes of the same reign, it was made penal for any one to obtain letters from the king, impeding the execution of the justiza's process, and they were declared null. Inferior courts were forbidden to proceed in any business after his prohibition.§ Many other laws might be cited, corroborating the authority of the great magistrate; but there are two parts of his remedial jurisdiction which deserve special notice.

These are the processes of jurisfirma, or firma del derecho, and of manifestation.

Processes of a jurisfirma and manifestation.

The former bears some analogy to the writs of *pone* and *certiorari* in England, through which the court of King's Bench exercises its right of withdrawing a suit from the jurisdiction of inferior tribunals. But the Aragonese jurisfirma was of more extensive operation. Its object was not only to bring a cause commenced in an inferior court before the justiciary, but to prevent or inhibit any process from issuing against the person who applied for its benefit, or any molestation from being offered to him; so that, as Blancas expresses it, when we have entered into a recognisance (firmè et graviter asseveremus) before the justiciary of Aragon to abide the decision of law, our fortunes shall be protected by the interposition of his prohibition, from the intolerable iniquity of the royal judges.* The process termed manifestation, afforded as ample security for personal liberty as that of jurisfirma did for property. "To *manifest* any one," says the writer so often quoted, "is to wrest him from the hands of the royal officers, that he may not suffer any illegal violence; not that he is set at liberty by this process, because the merits of his case are still to be inquired into; but because he is now detained publicly, instead of being, as it were, concealed, and the charge against him is investigated, not suddenly or with passion, but in calmness and according to law, therefore this is called manifestation."† The power of this writ (if I may

* Biancæ Comment., p. 663.

† Zurita, t. i., f. 403; t. ii., f. 34. Blanc., p. 666. The assent of the cortes seems to render this in the nature of a legislative rather than a judicial proceeding; but it is difficult to pronounce about a transaction so remote in time, and in a foreign country, the native historians writing rather concisely.

‡ Blanc., p. 663. James acquired the surname of Just, el Justiciero, by his fair dealings towards his subjects.—Zurita, t. ii., fol. 82.

§ Fueros de Aragon: Quod in dubiis non crassis. A. D. 1348.) Quod impetrans (1372), &c. Zurita, ii. fol. 229. Blanc., p. 671 and 811.

* Blanc., p. 751. Fueros de Aragon, f. 137.

† Est apud nos manifestare, reum subito sumere, atque è regiis manibus extorquere, ne qua ipsi contra jus vis inferatur. Non quod tunc reus judicio liberetur; nihilominus tamen, ut loquimur, de meritis causæ ad plenum cognoscitur. Sed quod deinceps manifesto teneatur, quasi antea celatus extitisset; necesseque deinde sit de ipsius culpâ, non impetu et cum furore, sed sedatis prorsus animis, et juxta constitutas leges judicari. Ex eo autem, quod hujusmodi judicium manifesto deprehensum, omnibus jam patere debeat, Manifestationis sibi nomen arripuit, p. 675.

Ipsius Manifestationis potestas tam solida est et repentina, ut homini jam collum in laqueum inserenti subveniat. Illius enim præsidio, damnatus, dum per leges licet, quasi experiendi juris gratiâ, de manibus judicum confestim extorquetur, et in carcerem ducitur ad id ædificatum, ibidemque asservatur tamdiu, quamdiu jurene, an injuriâ quid in eâ causâ factum fuerit, judicatur. Propterea carcer hic vulgari linguâ, la carcel de los manifestados nuncupatur, p. 751.

Fueros de Aragon, fol. 60. De Manifestationibus personarum. Independently of this right of manifestation by writ of the justiciary, there are several statutes in the Fueros against illegal detention, or unnecessary severity towards prisoners. —(De Custodiâ reorum, f. 163.) No judge could proceed secretly in a criminal process; an indispensable safeguard to public liberty, and one of the

apply our term) was such, as he elsewhere asserts, that it would rescue a man whose neck was in the halter. A particular prison was allotted to those detained for trial under this process.

Several proofs that such admirable provisions did not remain a dead letter in the law of Aragon, appear in the two historians, Blancas and Zurita, whose noble attachment to liberties, of which they had either witnessed, or might foretel the extinction, continually displays itself. I cannot help illustrating this subject by two remarkable instances. The heir apparent of the kingdom of Aragon had a constitutional right to the lieutenancy or regency during the sovereign's absence from the realm. The title and office indeed were permanent, though the functions must of course have been superseded during the personal exercise of royal authority. But as neither Catalonia nor Valencia, which often demanded the king's presence, was considered as part of the kingdom, there were pretty frequent occasions for this anticipated reign of the eldest prince. Such a regulation was not likely to diminish the mutual and almost inevitable jealousies between kings and their heirs apparent, which have so often disturbed the tranquillity of a court and a nation. Peter IV. removed his eldest son, afterward John I., from the lieutenancy of the kingdom. The prince entered into a firma del derecho before the justiciary, Dominic de Cerda, who, pronouncing in his favour, enjoined the king to replace his son in the lieutenancy as the undoubted right of the eldest born. Peter obeyed, not only in fact, to which, as Blancas observes, the law compelled him, but with apparent cheerfulness.* There are indeed no private persons who have so strong an interest in maintaining a free constitution and the civil liberties of their countrymen, as the members of royal families; since none are so much exposed, in absolute governments, to the resentment and suspicion of a reigning monarch.

Instances of their application.

John I., who had experienced the protection of law in his weakness, had afterward occasion to find it interposed against his power. This king had sent some citizens of Saragosa to prison without form of law. They applied to Juan de Cerda, the justiciary, for a manifestation. He issued his writ accordingly, nor, says Blancas, could he do otherwise, without being subject to a heavy fine. The king, pretending that the justiciary was partial, named one of his own judges, the vice-chancellor, as coadjutor. This raised a constitutional question, whether, on suspicion of partiality, a coadjutor to the justiciary could be appointed. The king sent a private order to the justiciary not to proceed to sentence upon this interlocutory point until he should receive instructions in the council, to which he was directed to repair. But he instantly pronounced sentence in favour of his ex

most salutary, as well as most ancient, provisions in our own constitution. (De judiciis.) Torture was abolished, except in cases of coining false money, and then only in respect of vagabonds.—(General Privilege of 1283.)

Zurita has explained the two processes of jurisfirma and manifestation so perspicuously, that, as the subject is very interesting, and rather out of the common way, I shall both quote and translate the passage. Con firmar de derecho, que es dar caution a estar a justicia, se conseden literas inhibitorias por el justicia de Aragon, para que no puedan ser presos, ni privados, ni despojados de su possession, hasta que judicialmente se conozca, y declare sobre la pretension, y justicia de las partes, parezca por processo legitimo, que se deve revocar la tal inhibition. Esta fué la suprema y principal autoridad del Justicia de Aragon desde que este magistrado tuvo origen, y lo que llama manifestation; porque assí como la firma de derecho por privilegio general del reyno impide, que no puede ninguno ser preso, o agraviado contra razon y justicia, de la misma manera la manifestacion, que es otro privilegio, y remedia muy principal, tiene fuerca, quando alguno es preso sin preceder processo legitimo, o quando lo prenden de hecho sin orden de justicia; y en estos casos solo el Justicia de Aragon, quando se tiene recurso al el, se interpone, manifestando il preso, que es tomarlo á su mano, de poder de qualquiera juez, aunque sea el mas supremo; y es obligado el Justicia de Aragon, y sus lugartenientes de proveer la manifestacion en el mismo instante, que les es pedida sin preceder informacion; y basta que se pida por qualquiere persona que se diga procurador del que quiere que lo tengan por manifesto, t. ii., fol. 386. "Upon a firma de derecho, which is to give security for abiding the decision of law, the Justiciary of Aragon issues letters inhibiting all persons to arrest the party, or deprive him of his possession, until the matter shall be judicially inquired into, and it shall appear that such inhibition ought to be revoked. This process and that which is called manifestation have been the chief powers of the justiciary ever since the commencement of that magistracy. And as the firma de derecho, by the general privilege of the realm, secures every man from being arrested or molested against reason and justice, so the manifestation, which is another principal and remedial right, takes place when any one is actually arrested without lawful process; and in such cases only the Justiciary of Aragon, when recourse is had to him, interposes by *manifesting* the person arrested, that is, by taking him into his own hands, out of the power of any judge, however high in authority; and this manifestation the justiciary, or his deputies in his absence, are bound to issue at the same instant it is demanded, without farther inquiry; and it may be demanded by any one as attorney of the party requiring to be manifested."

* Zurita, ubi supra. Blancas, p 673

clusive jurisdiction without a coadjutor. He then repaired to the palace. Here the vice-chancellor, in a long harangue, enjoined him to suspend sentence till he had heard the decision of the council. Juan de Cerda answered that, the case being clear, he had already pronounced upon it. This produced some expressions of anger from the king, who began to enter into an argument on the merits of the question. But the justiciary answered that, with all deference to his majesty, he was bound to defend his conduct before the cortes, and not elsewhere. On a subsequent day, the king having drawn the justiciary to his country palace on pretence of hunting, renewed the conversation with the assistance of his ally the vice-chancellor; but no impression was made on the venerable magistrate, whom John at length, though much pressed by his advisers to violent courses, dismissed with civility. The king was probably misled throughout this transaction, which I have thought fit to draw from obscurity, not only in order to illustrate the privilege of manifestation, but as exhibiting an instance of judicial firmness and integrity, to which, in the fourteenth century, no country perhaps in Europe could offer a parallel.*

Office of justiciary held for life

Before the cortes of 1348, it seems as if the justiciary might have been displaced at the king's pleasure. From that time he held his station for life. But, in order to evade this law, the king sometimes exacted a promise to resign upon request. Ximenes Cerdan, the justiciary in 1420, having refused to fulfil this engagement, Alfonso V. gave notice to all his subjects not to obey him, and notwithstanding the alarm which this encroachment created, eventually succeeded in compelling him to quit his office. In 1439, Alfonso insisted with still greater severity upon the execution of a promise to resign made by another justiciary, detaining him in prison until his death. But the cortes of 1442 proposed a law, to which the king reluctantly acceded, that the justiciary should not be compellable to resign his office on account of any previous engagement he might have made.†

Responsibility of this magistrate.

But lest these high powers, imparted for the prevention of abuses, should themselves be abused, the justiciary was responsible, in case of an unjust sentence, to the extent of the injury inflicted;* and was also subjected, by a statute of 1390, to a court of inquiry, composed of four persons chosen by the king out of eight named by the cortes; whose office appears to have been that of examining and reporting to the four estates in cortes, by whom he was ultimately to be acquitted or condemned. This superintendence of the cortes, however, being thought dilatory and inconvenient, a court of seventeen persons was appointed, in 1461, to hear complaints against the justiciary. Some alterations were afterward made in this tribunal.† The justiciary was always a knight, chosen from the second order of nobility, the barons not being liable to personal punishment. He administered the coronation-oath to the king; and in the cortes of Aragon, the justiciary acted as a sort of royal commissioner, opening or proroguing the assembly by the king's direction.

Rights of legislation and taxation.

No laws could be enacted or repealed, nor any tax imposed, without the consent of the estates duly assembled.‡ Even as early as the reign of Peter II., in 1205, that prince having attempted to impose a general tallage, the nobility and commons united for the preservation of their franchises; and the tax was afterward granted in part by the cortes.§ It may easily be supposed that the Aragonese were not behind other nations in statutes to secure these privileges, which, upon the whole, appear to have been more respected than in any other monarchy.‖ The general privileg

* Blancæ Commentar., ubi supra. Zurita relates the story, but not so fully.

† Fueros de Aragon, fol. 22. Zurita, t. iii., fol. 240. 255, 372. Blanc. Commen., p. 701.

* Fueros de Aragon, fol. 25.

† Blancas. Zurita, t. iii., f. 321; t. iv., f. 103. These regulations were very acceptable to the nation. In fact, the justiza of Aragon had possessed much more unlimited powers than ought to be intrusted to any single magistrate. The court of King's Bench in England, besides its consisting of four co-ordinate judges, is checked by the appellant jurisdictions of the Exchequer Chamber and House of Lords, and, still more importantly, by the rights of juries.

‡ Majores nostri, quæ de omnibus statuenda essent, noluerunt juberi, vetarive posse, nisi vocatis, descriptisque ordinibus. ac cunctis eorum adhibitis suffragiis, re ipsâ cognitâ et promulgatâ. Unde perpetuum illud nobis comparatum est jus, ut communes et publicæ leges neque tolli, neque rogari possint, nisi prius universus populus unâ voce comitiis institutis suum eâ de re liberum suffragium ferat; idque postea ipsius regis assensu comprobetur.—Biancæ, p. 761.

§ Zurita, t. i., fol. 92.

‖ Fueros de Aragon: Quod sissæ in Aragonia removeantur (A D. 1372). De prohibitione sissarum (1398). De conservatione patrimonii (1461) I have only remarked two instances of arbitrary taxation in Zurita's history, which is singularly full of information; one, in 1343, when Peter IV. collected money from various cities, though not without opposition: and the other a remonstrance

of 1283 formed a sort of ground-work for this legislation, like the Great Charter in England. By a clause in this law, cortes were to be held every year at Saragosa. But, under James II., their time of meeting was reduced to once in two years, and the place was left to the king's discretion.* Nor were the cortes of Aragon less vigilant than those of Castile in claiming a right to be consulted in all important deliberations of the executive power, or in remonstrating against abuses of government, or in superintending the proper expenditure of public money.† A variety of provisions, intended to secure these parliamentary privileges and the civil liberty of the subject, will be found dispersed in the collection of Aragonese laws,‡ which may be favourably compared with those of our own statute-book.

Four estates, or, as they were called, arms (brazos), formed the cortes of Aragon; the prelates,§ and commanders of military orders, who passed for ecclesiastics; the barons, or ricos hombres; the equestrian order, or infanzones, and the deputies of royal towns.* The two former had a right of appearing by proxy. There was no representation of the infanzones, or lower nobility. But it must be remembered that they were not numerous, nor was the kingdom large. Thirty five are reckoned by Zurita as present in the cortes of 1395, and thirty-three in those of 1412; and as upon both occasions an oath of fealty to a new monarch was to be taken, I presume that nearly all the nobility of the kingdom were present.† The ricos hombres do not seem to have exceeded twelve or fourteen in number. The ecclesiastical estate was not much, if at all, more numerous. A few principal towns alone sent deputies to the cortes; but their representation was very full; eight or ten, and sometimes more, sat for Saragosa, and no town appears to have had less than four representatives. During the interval of the cortes a permanent commission, varying a good deal as to numbers, but chosen out of the four estates, was empowered to sit with very considerable authority, receiving and managing the public revenue, and protecting the justiciary in his functions.‡

Cortes of Aragon.

The kingdom of Valencia and principality of Catalonia having been annexed to Aragon, the one by conquest, the other by marriage, were always kept distinct from it in their laws and government. Each had its cortes, composed of three estates, for the division of the nobility into two orders did not exist in either country. The Catalans were tenacious of their ancient usages, and averse to incorporation with any other people of Spain. Their national character was high-spirited and independent; in no part of the peninsula did the territorial aristocracy retain, or at least pretend to such extensive privileges,§ and the citizens were

Government of Valencia and Catalonia.

the cortes in 1383 against heavy taxes; and it is not clear that this refers to general unauthorized taxation.—Zurita, t. ii., f. 168 and 382. Blancas mentions that Alfonso V. set a tallage upon his towns for the marriage of his natural daughters, which he might have done had they been legitimate; but they appealed to the justiciary's tribunal, and the king receded from his demand, p. 701

Some instances of tyrannical conduct in violation of the constitutional laws occur, as will naturally be supposed, in the annals of Zurita. The execution of Bernard Cabrera under Peter IV., t. ii., f. 336, and the severities inflicted on Queen Forcia by her son-in-law John I., f. 391, are perhaps as remarkable as any.

* Zurita, t. i., f. 426. In general the session lasted from four to six months. One assembly was prorogued from time to time, and continued six years, from 1446 to 1452, which was complained of as a violation of the law for their biennial renewal, t. iv., f. 6.

† The Sicilian war of Peter III. was very unpopular, because it had been undertaken without consent of the barons, contrary to the practice of the kingdom; porque ningun negocio arduo emprendian, sin acuerdo y consejo de sus ricos hombres.—Zurita, t. i., fol. 264. The cortes, he tells us, were usually divided into two parties, whigs and tories; estava ordinariamente dividida en dos partes, la una que pensava procurar el beneficio del reyno, y la otra que el servicio del rey, t. iii., fol. 321

‡ Fueros y observancias del reyno de Aragon. 2 vols. in fol., Saragosa, 1667. The most important of these are collected by Blancas, p. 750.

§ It is said by some writers that the ecclesiastical arm was not added to the cortes of Aragon till about the year 1300. But I do not find mention in Zurita of any such constitutional change at that time; and the prelates, as we might expect from the analogy of other countries, appear as members of the national council long before. Queen Petronilla, in 1142, summoned a los perlados, ricos hombres, y cavalleros, y procuradores de las ciudades y villas, que le juntassen a cortes generales en la ciudad de Huesca.—Zurita, t. i., fol. 71. So in the cortes of 1275, and on other occasions.

* Popular representation was more ancient in Aragon than in any other monarchy. The deputies of towns appear in the cortes of 1133, as Robertson has remarked from Zurita.—Hist. of Charles V., note 32. And this cannot well be called in question, or treated as an anomaly, for we find them mentioned in 1142 (the passage cited in the last note), and again in 1164, when Zurita enumerates many of their names, fol. 74. The institution of concejos, or corporate districts under a presiding town, prevailed in Aragon, as it did in Castile.

† Zurita, t. ii., f. 420; t. iii., f. 76.

‡ Biancæ, p. 762. Zurita, t. iii., f. 76; f. 182, et alibi.

§ Zurita, t. ii., f. 360. The villanage of the peasantry in some parts of Catalonia was very severe

justly proud of wealth acquired by industry, and of renown achieved by valour. At the accession of Ferdinand I., which they had not much desired, the Catalans obliged him to swear three times successively to maintain their liberties, before they would take the reciprocal oath of allegiance.* For Valencia it seems to have been a politic design of James the Conqueror to establish a constitution nearly analogous to that of Aragon, but with such limitations as he should impose, taking care that the nobles of the two kingdoms should not acquire strength by union. In the reigns of Peter III. and Alfonso III., one of the principal objects contended for by the barons of Aragon was the establishment of their own laws in Valencia; to which the king never acceded.† They permitted, however, the possessions of the natives of Aragon in the latter kingdom to be governed by the law of Aragon.‡ These three states, Aragon, Valencia, and Catalonia, were perpetually united by a law of Alfonso III.; and every king on his accession was bound to swear that he would never separate them.§ Sometimes general cortes of the kingdoms and principality were convened; but the members did not, even in this case, sit together, and were no otherwise united, than as they met in the same city.‖

I do not mean to represent the actual condition of society in Aragon as equally excellent with the constitutional laws. Relatively to other monarchies, as I have already observed, there seem to have been fewer excesses of the royal prerogative in that kingdom. But the licentious habits of a feudal aristocracy prevailed very long. We find in history instances of private war between the great families, so as to disturb the peace of the whole nation, even near the close of the fifteenth century.¶ The right of avenging injuries by arms, and the ceremony of diffidation, or solemn defiance of an enemy, are preserved by the laws. We even meet with the ancient barbarous usage of paying a composition to the kindred of a murdered man.** The citizens of Saragosa were sometimes turbulent, and a refractory nobleman sometimes defied the ministers of justice. But, owing to the remarkable copiousness of the principal Aragonese historian, we find more frequent details of this nature than in the scantier annals of some countries. The internal condition of society was certainly far from peaceable in other parts of Europe.

State of police.

By the marriage of Ferdinand with Isabella, and by the death of John II. in 1479, the two ancient and rival kingdoms of Castile and Aragon were for ever consolidated in the monarchy of Spain. There had been some difficulty in adjusting the respective rights of the husband and wife over Castile. In the middle ages, it was customary for the more powerful sex to exercise all the rights which it derived from the weaker, as much in sovereignties as in private possessions. But the Castilians were determined to maintain the positive and distinct prerogatives of their queen, to which they attached the independence of their nation. A compromise therefore was concluded, by which, though, according to our notions, Ferdinand obtained more than a due share, he might consider himself as more strictly limited than his father had been in Navarre. The names of both were to appear jointly in their style, and upon the coin, the king's taking the precedence in respect of his sex. But, in the royal scutcheon, the arms of Castile were preferred on account of the kingdom's dignity. Isabella had the appointment of all civil offices in Castile; the nomination of spiritual benefices ran in the name of both. The government was to be conducted by the two conjointly when they were together, or by either singly, in the province where one or other might happen to reside.* This partition was well preserved throughout the life of Isabel without mutual encroachments or jealousies. So rare a unanimity between persons thus circumstanced must be attributed to the superior qualities of that princess, who, while she maintained a constant good understanding with a very ambitious husband, never relaxed in the exercise of her paternal authority over the kingdoms of her ancestors.

Union of Castile and Aragon.

Ferdinand and Isabella had no sooner quenched the flames of civil discord in Castile, than they determined to give an unequivocal proof to Europe of the vigour which the Spanish monarchy was to display under their

Conquest of Granada.

even near the end of the fifteenth century, t. iv., 237.

* Zurita, t. iii., f. 81.

† Id., t. i., f. 281, 310, 333. There was originally a justiciary in the kingdom of Valencia, f. 281; but this, I believe, did not long continue.

‡ Idem, t. ii, f. 433 § Idem, t. ii., f. 91.

‖ Biancæ Comment., p. 760. Zurita, t. iii., fol. 239.

¶ Zurita, t. iv., fol. 189.

** Fueros de Aragon, f. 166, &c.

* Zurita, t. iv., fol. 224. Mariana, l. xxiv. c. 1

government. For many years an armistice with the Moors of Granada had been uninterrupted. Neither John II. nor Henry IV. had been at leisure to think of aggressive hostilities; and the Moors themselves, a prey, like their Christian enemies, to civil war, and the feuds of their royal family, were content with the unmolested enjoyment of the finest province in the peninsula. If we may trust historians, the sovereigns of Granada were generally usurpers and tyrants. But I know not how to account for that vast populousness, that grandeur and magnificence, which distinguished the Mahometan kingdoms of Spain, without ascribing some measure of wisdom and beneficence to their governments. These southern provinces have dwindled in later times; and, in fact, Spain itself is chiefly interesting to most travellers, for the monuments which a foreign and odious race of conquerors have left behind them. Granada was however disturbed by a series of revolutions about the time of Ferdinand's accession, which naturally encouraged his designs. The Moors, contrary to what might have been expected from their relative strength, were the aggressors by attacking a town in Andalusia.* [A. D. 1481.] Predatory inroads of this nature had hitherto been only retaliated by the Christians. But Ferdinand was conscious that his resources extended to the conquest of Granada, the consummation of a struggle protracted through nearly eight centuries. Even in the last stage of the Moorish dominion, exposed on every side to invasion, enfeebled by a civil dissension, that led one party to abet the common enemy, Granada was not subdued without ten years of sanguinary and unremitting contest. Fertile beyond all the rest of Spain, that kingdom contained seventy walled towns; and the capital is said, almost two centuries before, to have been peopled by 200,000 inhabitants.* Its resistance to such a force as that of Ferdinand is perhaps the best justification of the apparent negligence of earlier monarchs. But Granada was ultimately compelled to undergo the yoke. The city surrendered on the second of January, 1492; an event glorious not only to Spain, but to Christendom; and which, in the political combat of the two religions, seemed almost to counterbalance the loss of Constantinople. It raised the name of Ferdinand and of the new monarchy which he governed, to high estimation throughout Europe. Spain appeared an equal competitor with France in the lists of ambition. These great kingdoms had for some time felt the jealousy natural to emulous neighbours. The house of Aragon loudly complained of the treacherous policy of Louis XI. He had fomented the troubles of Castile, and given, not indeed an effectual aid, but all promises of support, to the Princess Joanna, the competitor of Isabel Rousillon, a province belonging to Aragon, had been pledged to France by John II. for a sum of money. It would be tedious to relate the subsequent events, or to discuss their respective claims to its possession.† At the accession of Ferdinand, Louis XI. still held Rousillon, and showed little intention to resign it. But Charles VIII., eager to smooth every impediment to his Italian expedition, restored the province to Ferdinand in 1493. Whether, by such a sacrifice, he was able to lull the King of Aragon into acquiescence, while he dethroned his relation at Naples, and alarmed for a moment all Italy with the apprehension of French dominion, it is not within the limits of the present work to inquire

* Zurita, t. iv., fol. 314

* Zurita, t. iv., fol. 314.

† For these transactions, see Garnier, Hist. de France, or Gaillard, Rivalité de France et d'Espagne, t. iii. The latter is the most impartial French writer I have ever read, in matters which his own country is concerned.

CHAPTER V.

HISTORY OF GERMANY TO THE DIET OF WORMS IN 1495.

Sketch of German History under the Emperors of the House of Saxony.—House of Franconia.—Henry IV.—House of Swabia.—Frederick Barbarossa.—Fall of Henry the Lion.—Frederick II.—Extinction of House of Swabia.—Changes in the Germanic Constitution.—Electors.—Territorial Sovereignty of the Princes.—Rodolph of Hapsburg.—State of the Empire after his Time.—Causes of Decline of Imperial Power.—House of Luxemburg.—Charles IV.—Golden Bull.—House of Austria.—Frederick III.—Imperial Cities.—Provincial States.—Maximilian.—Diet of Worms.—Abolition of private Wars.—Imperial Chamber.—Aulic Council.—Bohemia.—Hungary.—Switzerland.

Separation of Germany from France

AFTER the deposition of Charles the Fat, in 888, which finally severed the connexion between France and Germany,* Arnulf, an illegitimate descendant of Charlemagne, obtained the throne of the latter country, in which he was succeeded by his son Louis.† But upon the death of this prince in 911, the German branch of that dynasty became extinct. There remained indeed Charles the Simple, acknowledged as king in some parts of France, but rejected in others, and possessing no personal claims to respect. The Germans therefore wisely determined to choose a sovereign from among themselves. They were at this time divided into five nations, each under its own duke, and distinguished by difference of laws as well as of origin; the Franks, whose territory, comprising Franconia and the modern palatinate, was considered as the cradle of the empire, and who seem to have arrogated some superiority over the rest, the Swabians, the Bavarians, the Saxons, under which name the inhabitants of Lower Saxony alone and Westphalia were included, and the Lorrainers, who occupied the left bank of the Rhine as far as its termination. [A. D. 911.] The choice of these nations in their general assembly fell upon Conrad, duke of Franconia, according to some writers, or at least a man of high rank, and descended through females from Charlemagne.*

Election of Conrad.

Conrad dying without male issue, the crown of Germany was bestowed upon Henry the Fowler, duke of Saxony, ancestor of the three Othos, who followed him in direct succession. To Henry, and to the first Otho, Germany was more indebted than to any sovereign since Charlemagne. The conquest of Italy, and recovery of the imperial title, are indeed the most brilliant trophies of Otho the Great; but he conferred far more unequivocal benefits upon his own country by completing what his father had begun, her liberation from the inroads of the Hungarians. Two marches, that of Misnia, erected by Henry the Fowler, and that of Austria, by Otho, were added to the Germanic territories by their victories.†

House of Saxony. Henry the Fowler, 919. Otho I. 936. Otho II. 973. Otho III. 983.

A lineal succession of four descents without the least opposition, seems to show that the Germans were disposed to consider their monarchy as fixed in the Saxon family. Otho II. and III. had been chosen each in his father's lifetime, and during infancy. The formality of election subsisted at that time in every European kingdom; and the imperfect rights of birth required a ratification by public assent. If at least France and England were hereditary monarchies in

* There can be no question about this in a general sense. But several German writers of the time assert, that both Eudes and Charles the Simple, rival kings of France, acknowledged the feudal superiority of Arnulf. Charles, says Regino, regnum quod usurpaverat ex manu ejus percepit.—Struvius, Corpus Hist. German., p. 202, 203.

† The German princes had some hesitation about the choice of Louis: but their partiality to the Carlovingian line prevailed.—Struvius, p. 208: quia reges Francorum semper ex uno genere procedebant, says an archbishop Hatto, in writing to the pope.

* Schmidt, Hist. des Allemands, t. ii., p. 285 Struvius, Corpus Historiæ Germanicæ, p. 210 The former of these writers does not consider Conrad as Duke of Franconia.

† Many towns in Germany, especially on the Saxon frontier, were built by Henry I., who is said to have compelled every ninth man to take up his residence in them. This had a remarkable tendency to promote the improvement of that territory, and, combined with the discovery of the gold and silver mines of Goslar under Otho I., rendered it the richest and most important part of the empire.—Struvius, p. 225 and 251. Schmidt, t. ii., p. 322. Putter, Historical Development of the German Constitution, vol. i. p. 115.

the tenth century, the same may surely be said of Germany; since we find the lineal succession fully as well observed in the last as in the former. But upon the immature and unexpected decease of Otho III., a momentary opposition was offered to Henry, duke of Bavaria, a collateral branch of the reigning family. He obtained the crown, however, by what contemporary historians call an hereditary title,* and it was not until his death, in 1024, that the house of Saxony was deemed to be extinguished.

Henry II. 1002.

No person had now any pretensions that could interfere with the unbiased suffrages of the nation; and accordingly a general assembly was determined by merit to elect Conrad, surnamed the Salic, a nobleman of Franconia.† From this prince sprang three successive emperors, Henry III., IV., and V. Perhaps the imperial prerogatives over that insubordinate confederacy never reached so high a point as in the reign of Henry III., the second emperor of the house of Franconia. It had been, as was natural, the object of all his predecessors, not only to render their throne hereditary, which, in effect, the nation was willing to concede, but to surround it with authority sufficient to control the leading vassals. These were the dukes of the four nations of Germany, Saxony, Bavaria, Swabia, and Franconia, and the three archbishops of the Rhenish cities, Mentz, Treves, and Cologne. Originally, as has been more fully shown in another place, dutchies, like counties, were temporary governments, bestowed at the pleasure of the crown. From this first stage they advanced to hereditary offices, and finally to patrimonial fiefs. But their progress was much slower in Germany than in France. Under the Saxon line of emperors, it appears probable, that although it was usual, and consonant to the prevailing notions of equity, to confer a dutchy upon the nearest heir, yet no positive rule enforced this upon the emperor, and some instances of a contrary proceeding occurred.‡ But, if the royal prerogative in this respect stood higher than in France, there was a countervailing principle, that prohibited the emperor from uniting a fief to his domain, or even retaining one which he had possessed before his accession. Thus Otho the Great granted away his dutchy of Saxony, and Henry II. that of Bavaria. Otho the Great endeavoured to counteract the effects of this custom, by conferring the dutchies that fell into his hands upon members of his own family. This policy, though apparently well conceived, proved of no advantage to Otho; his son and brother having mixed in several rebellions against him. It was revived, however, by Conrad II. and Henry III. The latter was invested by his father with the two dutchies of Swabia and Bavaria. Upon his own accession, he retained the former for six years, and even the latter for a short time. The dutchy of Franconia, which became vacant, he did not regrant, but endeavoured to set a precedent of uniting fiefs to the domain. At another time, after sentence of forfeiture against the Duke of Bavaria, he bestowed that great province on his wife, the Empress Agnes.* He put an end altogether to the form of popular concurrence, which had been usual when the investiture of a dutchy was conferred: and even deposed dukes by the sentence of a few princes, without the consent of the diet.† If we combine with these proofs of authority in the domestic administration of Henry III., his almost unlimited control over papal elections or rather the right of nomination that he acquired, we must consider him as the most absolute monarch in the annals of Germany.

House of Franconia. Conrad II. 1024. Henry III. 1039. Henry IV. 1056. Henry V. 1106.

These ambitious measures of Henry III. prepared fifty years of calamity for his son. It is easy to perceive that the misfortunes of Henry IV. were primarily occasioned by the jealousy with which repeated violations of their constitutional usages had inspired the nobility.‡ The mere circumstance of Henry IV.'s minority, under

Unfortunate reign of Henry IV.

* A maximâ multitudine vox una respondit; Henricum, Christi adjutorio, et jure hæreditario, regnaturum.—Ditmar apud Struvium, p. 273. See other passages quoted in the same place.—Schmidt, t. ii., p. 410.

† Conrad was descended from a daughter of Otho the Great, and also from Conrad I. His first cousin was Duke of Franconia.—Struvius. Schmidt. Pfeffel.

‡ Schmidt t. ii., p. 393, 403. Struvius, p. 214, supposes the hereditary rights of dukes to have commenced under Conrad I.; but Schmidt is perhaps a better authority; and Struvius afterward mentions the refusal of Otho I. to grant the dutchy of Bavaria to the sons of the last duke, which, however, excited a rebellion, p. 235.

* Schmidt, t. iii., p. 25, 37

† Id., p. 207.

‡ In the very first year of Henry's reign, while he was but six years old, the princes of Saxony are said by Lambert of Aschaffenburg to have formed a conspiracy to depose him, out of resentment for the injuries they had sustained from his father. Struvius, p. 306. St. Marc, t. iii., p. 248.

the guardianship of a woman, was enough to dissipate whatever powers his father had acquired. Hanno, archbishop of Mentz, carried the young king away by force from his mother, and governed Germany in his name; till another archbishop, Adalbert of Bremen, obtained greater influence over him. Through the neglect of his education, Henry grew up with a character not well fitted to retrieve the mischief of so unprotected a minority; brave indeed, well-natured, and affable, but dissolute beyond measure, and addicted to low and debauched company. [A. D. 1073.] He was soon involved in a desperate war with the Saxons, a nation valuing itself on its populousness and riches, jealous of the house of Franconia, who wore a crown that had belonged to their own dukes, and indignant at Henry's conduct in erecting fortresses throughout their country.

In the progress of this war many of the chief princes evinced an unwillingness to support the emperor.* Notwithstanding this, it would probably have terminated, as other rebellions had done, with no permanent loss to either party. But, in the middle of this contest, another far more memorable broke out with the Roman see, concerning ecclesiastical investitures. The motives of this famous quarrel will be explained in a different chapter of the present work. Its effect in Germany was ruinous to Henry. [A. D. 1077.] A sentence, not only of excommunication, but of deposition, which Gregory VII. pronounced against him, gave a pretence to all his enemies, secret as well as avowed, to withdraw their allegiance.† At the head of these was Rodolph, duke of Swabia, whom an assembly of revolted princes raised to the throne. We may perceive, in the conditions of Rodolph's election, a symptom of the real principle that animated the German aristocracy against Henry IV. It was agreed that the kingdom should no longer be hereditary, not conferred on the son of a reigning monarch, unless his merit should challenge the popular approbation.* The pope strongly encouraged this plan of rendering the empire elective, by which he hoped either eventually to secure the nomination of its chief for the Holy See, or, at least, by sowing the seed of civil dissensions in Germany, to render Italy more independent. Henry IV. however displayed greater abilities in his adversity than his early conduct had promised. [A. D. 1080.] In the last of several decisive battles, Rodolph, though victorious, was mortally wounded; and no one cared to take up a gauntlet which was to be won with so much trouble and uncertainty. The Germans were sufficiently disposed to submit; but Rome persevered in her unrelenting hatred. At the close of Henry's long reign, she excited against him his eldest son, and after more than thirty years of hostility, had the satisfaction of wearing him down with misfortune, and casting out his body, as excommunicated, from its sepulchre.

In the reign of his son Henry V. there is no event worthy of much attention, except the termination of the great contest about investitures. At his death in 1125, the male line of the Franconian emperors was at an end. [A. D. 1125.] Frederick, duke of Swabia, grandson by his mother of Henry IV., had inherited their patrimonial estates, and seemed to represent their dynasty. But both the last emperors had so many enemies, and a disposition to render the crown elective prevailed so strongly among the leading princes, that Lothaire, duke of Saxony, was elevated to the throne, though rather in a tumultuous and irregular manner.† Lothaire, who had been engaged in a revolt against Henry V. and the chief

Extinction of the House of Franconia.

Election of Lothaire.

* Struvius. Schmidt.

† A party had been already formed who were meditating to depose Henry. His excommunication came just in time to confirm their resolutions. It appears clearly, upon a little consideration of Henry IV.'s reign, that the ecclesiastical quarrel was only secondary in the eyes of Germany. The contest against him was a struggle of the aristocracy, jealous of the imperial prerogatives which Conrad II. and Henry III. had strained to the utmost. Those who were in rebellion against Henry were not pleased with Gregory VII. Bruno, author of a history of the Saxon war, a furious invective, manifests great dissatisfaction with the court of Rome, which he reproaches with dissimulation and venality

* Hoc etiam ibi consensu communi comprobatum, Romani pontificis auctoritate est corroboratum, ut regia potestas nulli per hæreditatem, sicut antea fuit consuetudo, cederet, sed filius regis, etiamsi valde dignus esset, per electionem spontaneam, non per successionis lineam, rex proveniret: si vero non esset dignus regis filius, vel si nollet eum populus, quem regem facere vellet, haberet in potestate populus.—Bruno de Bello Saxonico, apud Struvium, p. 327.

† See an account of Lothaire's election by a contemporary writer, in Struvius, p. 357. See also proofs of the dissatisfaction of the aristocracy at the Franconian government.—Schmidt, t. iii., p. 328. It was evidently their determination to render the empire truly elective (Id., p. 335); and perhaps we may date that fundamental principle of the Germanic constitution from the accession of Lothaire. Previously to that era, birth seems to have given not only a fair title to preference, but a sort of inchoate right, as in France, Spain, and England. Lothaire signed a capitulation at his accession.

of a nation that bore an inveterate hatred to the house of Franconia, was the natural enemy of the new family that derived its importance and pretensions from that stock. It was the object of his reign, accordingly, to oppress the two brothers, Frederick and Conrad, of the Hohenstauffen or Swabian family. By this means he expected to secure the succession of the empire for his son-in-law. Henry, surnamed the Proud, who married Lothaire's only child, was fourth in descent from Welf, son of Azon, marquis of Este, by Cunegonda, heiress of a distinguished family, the Welfs of Altorf in Swabia. Her son was invested with the dutchy of Bavaria in 1071. His descendant, Henry the Proud, represented also, through his mother, the ancient dukes of Saxony, surnamed Billung, from whom he derived the dutchy of Luneburg. The wife of Lothaire transmitted to her daughter the patrimony of Henry the Fowler, consisting of Hanover and Brunswick. Besides this great dowry, Lothaire bestowed upon his son-in-law the dutchy of Saxony, in addition to that of Bavaria.*

This amazing preponderance, however, tended to alienate the princes of Germany from Lothaire's views in favour of Henry; and the latter does not seem to have possessed abilities adequate to his eminent station. On the death of Lothaire in 1138, the partisans of the house of Swabia made a hasty and irregular election of Conrad, in which the Saxon faction found itself obliged to acquiesce.† The new emperor availed himself of the jealousy which Henry the Proud's aggrandizement had excited. [A. D. 1138.] Under pretence that two dutchies could not legally be held by the same person, Henry was summoned to resign one of them; and on his refusal, the diet pronounced that he had incurred a forfeiture of both. Henry made but little resistance, and, before his death, which happened soon afterward, saw himself stripped of all his hereditary as well as acquired possessions. Upon this occasion, the famous names of Guelf and Ghibelin were first heard, which were destined to keep alive the flame of civil dissension in far distant countries, and after their meaning had been forgotten. The Guelfs or Welfs were, as I have said, the ancestors of Henry, and the name has become a sort of patronymic in his family. The word Ghibelin is derived from Wibelung a town in Franconia, whence the emperors of that line are said to have sprung. The house of Swabia was considered in Germany as representing that of Franconia; as the Guelfs may, without much impropriety, be deemed to represent the Saxon line.*

House of Swabia. Conrad III

Original of Guelfs and Ghibelins.

Though Conrad III. left a son, the choice of the electors fell, at his own request, upon his nephew, Frederick Barbarossa.† The most conspicuous events of this great emperor's life belong to the history of Italy At home he was feared and respected the imperial prerogatives stood as high during his reign, as, after their previous decline, it was possible for a single man to carry them.‡ But the only circumstance which appears memorable enough for the present sketch, is the second fall of the Guelfs. [A. D. 1178.] Henry the Lion, son of Henry the Proud, had been restored by Conrad III. to his father's dutchy of Saxony, resigning his claim to that of Bavaria, which had been conferred on the Margrave of Austria. This renunciation, which indeed was only made in his name during childhood, did not prevent him from urging the Emperor Frederick to restore the whole of his birthright; and Frederick, his first cousin, whose life he had saved in a sedition at Rome, was induced to comply with this request in 1156. Far from evincing that political jealousy which some writers impute to him, the emperor seems to have carried his generosity beyond the limits of prudence For many years their union was apparently cordial. But, whether it was that Henry took umbrage at part of Frederick's conduct,◊ or that mere ambition rendered him ungrateful, he certainly abandoned his sovereign in a moment of distress, refusing to give any assistance in that expedition into Lombardy, which ended in the unsuccessful battle of Legnano. Frederick could not forgive this injury; and taking advantage of complaints which Henry's power and haughtiness had produced, summoned him to answer charges in a general diet. The duke refused to appear, and being adjudged contumacious, a sentence of confiscation, similar to that which ruined his father, fell upon his head; and the vast imperial fiefs that he

Frederick Barbarossa

Fall of Henry the Lion

* Pfeffel, Abrégé Chronologique de l'Histoire d'Allemagne, t. i., p. 269 (Paris, 1777). Gibbon's Antiquities of the House of Brunswick.

† Schmidt.

* Struvius, p. 370 and 378.

† Ibid.

‡ Pfeffel, p. 341.

◊ Frederick had obtained the succession of Welf marquis of Tuscany, uncle of Henry the Lion, who probably considered himself as entitled to expect it —Schmidt, p 427.

possessed were shared among some potent enemies.* He made an ineffectual resistance; like his father, he appears to have owed more to fortune than to nature; and, after three years' exile, was obliged to remain content with the restoration of his allodial estates in Saxony. These, fifty years afterward, were converted into imperial fiefs, and became the two dutchies of the house of Brunswick, the lineal representatives of Henry the Lion, and inheritors of the name of Guelf.†

Notwithstanding the prevailing spirit of the German oligarchy, Frederick Barbarossa had found no difficulty in procuring the election of his son Henry, even during infancy, as his successor.‡ [A. D. 1190.] The fall of Henry the Lion had greatly weakened the ducal authority in Saxony and Bavaria; the princes who acquired that title, especially in the former country, finding that the secular and spiritual nobility of the first class had taken the opportunity to raise themselves into an immediate dependance upon the empire. Henry VI. came therefore to the crown with considerable advantages in respect of prerogative; and these inspired him with a bold scheme of declaring the empire hereditary. One is more surprised to find that he had no contemptible prospect of success in this attempt; fifty-two princes, and even what appears hardly credible, the See of Rome, under Clement III., having been induced to concur in it. But the Saxons made so vigorous an opposition, that Henry did not think it advisable to persevere.§ He procured, however, the election of his son Frederick, an infant only two years old. But, the emperor dying almost immediately, a powerful body of princes, supported by Pope Innocent III., were desirous to withdraw their consent. [A. D. 1197.] Philip, duke of Swabia, the late king's brother, unable to secure his nephew's succession, brought about his own election by one party, while another chose Otho of Brunswick, younger son of Henry the Lion. This double election renewed the rivalry between the Guelfs and Ghibelins, and threw Germany into confusion for several years. Philip, whose pretensions appear to be the more legitimate of the two, gained ground upon his adversary, notwithstanding the opposition of the pope, till he was assassinated, in consequence of a private resentment. [A. D. 1208.] Otho IV. reaped the benefit of a crime in which he did not participate; and became for some years undisputed sovereign. But, having offended the pope by not entirely abandoning his imperial rights over Italy, he had, in the latter part of his reign, to contend against Frederick, son of Henry VI., who, having grown up to manhood, came into Germany as heir of the house of Swabia, and, what was not very usual in his own history or that of his family, the favoured candidate of the Holy See. Otho IV. had been almost entirely deserted, except by his natural subjects, when his death, in 1218, removed every difficulty, and left Frederick II. in the peaceable possession of Germany.

Henry VI.

Philip and Otho IV.

The eventful life of Frederick II. was chiefly passed in Italy. To preserve his hereditary dominions, and chastise the Lombard cities, were the leading objects of his political and military career. He paid therefore but little attention to Germany, from which it was in vain for any emperor to expect effectual assistance towards objects of his own. Careless of prerogatives which it seemed hardly worth an effort to preserve, he sanctioned the independence of the princes, which may be properly dated from his reign. In return they readily elected his son Henry king of the Romans; and, on his being implicated in a rebellion, deposed him with equal readiness, and substituted his brother Conrad at the emperor's request.* But in the latter part of Frederick's reign, the deadly hatred of Rome penetrated beyond the Alps. After his solemn deposition in the council of Lyons, he was incapable, in ecclesiastical eyes, of holding the imperial sceptre. [A. D. 1245.] Innocent IV. found however some difficulty in setting up a rival emperor. Henry landgrave of Thuringia, made an indiffer

Frederick II.

Consequences of the council of Lyons.

* Putter, in his Historical Development of the Constitution of the German Empire, is inclined to consider Henry the Lion as sacrificed to the emperor's jealousy of the Guelfs, and as illegally proscribed by the diet. But the provocations he had given Frederick are undeniable; and, without pretending to decide on a question of German history, I do not see that there was any precipitancy or manifest breach of justice in the course of proceedings against him. Schmidt, Pfeffel, and Struvius do not represent the condemnation of Henry as unjust.

† Putter, p. 220. ‡ Struvius, p. 418.

§ Struvius, p. 424. Impetravit a subditis, ut, cessante pristinâ Palatinorum electione, imperium in ipsius posteritatem, distinctâ proximorum successione, transiret, et sic in ipso terminus esset electionis, principiumque successivæ dignitatis.—Gervas. Tilburiens., ibidem.

* Struvius p. 457.

ent figure in this character. [A. D. 1248.] Upon his death, William, count of Holland, was chosen by the party adverse to Frederick and his son Conrad; and, after the emperor's death, he had some success against the latter. It is hard indeed to say that any one was actually sovereign for twenty-two years that followed the death of Frederick II.; a period of contested title and universal anarchy, which is usually denominated the grand interregnum. [A. D. 1250–1272.] On the decease of William of Holland, in 1256, a schism among the electors produced the double choice of Richard, earl of Cornwall, and Alfonso X., king of Castile. It seems not easy to determine which of these candidates had a legal majority of votes,* but the subsequent recognition of almost all Germany, and a sort of possession evidenced by public acts, which have been held valid, as well as the general consent of contemporaries, may justify us in adding Richard to the imperial list. The choice indeed was ridiculous, as he possessed no talents which could compensate for his want of power; but the electors attained their objects; to perpetuate a state of confusion by which their own independence was consolidated, and to plunder without scruple a man, like Didius at Rome, rich and foolish enough to purchase the first place upon earth.

Grand interregnum.

Richard of Cornwall.

That place, indeed, was now become a mockery of greatness. For more than two centuries, notwithstanding the temporary influence of Frederick Barbarossa and his son, the imperial authority had been in a state of gradual decay. From the time of Frederick II. it had bordered upon absolute insignificance; and the more prudent German princes were slow to canvass for a dignity so little accompanied by respect. The changes wrought in the Germanic constitution during the period of the Swabian emperors chiefly consist in the establishment of an oligarchy of electors, and of the territorial sovereignty of the princes.

State of the Germanic constitution.

1. At the extinction of the Franconian line by the death of Henry V., it was determined by the German nobility to make their empire practically elective, admitting no right, or even natural pretension, in the eldest son of a reigning sovereign. Their choice upon former occasions had been made by free and general suffrage. But it may be presumed that each nation voted unanimously, and according to the disposition of its duke. It is probable, too, that the leaders, after discussing in previous deliberations the merits of the several candidates, submitted their own resolutions to the assembly, which would generally concur in them without hesitation. At the election of Lothaire, in 1124, we find an evident instance of this previous choice, or, as it was called, *prætaxation*, from which the electoral college of Germany has been derived. The princes, it is said, trusted the choice of an emperor to ten persons, in whose judgment they promised to acquiesce.* This precedent was in all likelihood, followed at all subsequent elections. The proofs indeed are not perfectly clear. But in the famous privilege of Austria, granted by Frederick I., in 1156, he bestows a rank upon the newly created duke of that country, immediately after the electing princes (post principes electores);† a strong presumption that the right of prætaxation was not only established, but limited to a few definite persons. In a letter of Innocent III. concerning the double election of Philip and Otho, in 1198, he asserts the latter to have had a majority in his favour of those to whom the right of election chiefly belongs (ad quos principaliter spectat electio).‡ And a law of Otho, in 1208, if it be genuine, appears to fix the exclusive privilege of the seven electors.§ Nevertheless, so obscure is this important part of the Germanic system, that we find four ecclesiastical and two secular princes concurring with the regular electors in the act, as reported by a contemporary writer, that creates Conrad, son of Frederick II., king of the Romans.‖ This, however, may have been an irregu

Electors

* The election ought legally to have been made at Frankfort. But the Elector of Treves, having got possession of the town, shut out the archbishops of Mentz and Cologne, and the count palatine, on pretence of apprehending violence. They met under the walls, and there elected Richard. Afterward Alfonso was chosen by the votes of Treves, Saxony, and Brandenburg. Historians differ about the vote of Ottocar, king of Bohemia, which would turn the scale. Some time after the election, it is certain that he was on the side of Richard. Perhaps we may collect from the opposite statement of Struvius, p. 504, that the proxies of Ottocar had voted for Alfonso, and that he did not think fit to recognise their act.

There can be no doubt that Richard was *de facto* sovereign of Germany; and it is singular that Struvius should assert the contrary, on the authority of an instrument of Rodolph, which expressly designates him king, per quondam Richardum regem illustrem.—Struv., p. 502.

* Struv., p. 357. Schmidt, t. iii., p. 331.

† Schmidt, t. iii., p. 390. ‡ Pfeffel, p. 360

§ Schmidt, t. iv., p. 80.

‖ This is not mentioned in Struvius, or the other German writers. But Denina (Rivoluzioni d'Ita

ar deviation from the principle already established. But it is admitted, that all the princes retained, at least during the twelfth century, their consenting suffrage; like the laity in an episcopal election, whose approbation continued to be necessary long after the real power of choice had been withdrawn from them.*

It is not easy to account for all the circumstances that gave to seven spiritual and temporal princes this distinguished pre-eminence. The three archbishops, Mentz, Treves, and Cologne, were always indeed at the head of the German church. But the secular electors should naturally have been the dukes of four nations: Saxony, Franconia, Swabia, and Bavaria. We find, however, only the first of these in the undisputed exercise of a vote. It seems probable that, when the electoral princes came to be distinguished from the rest, their privilege was considered as peculiarly connected with the discharge of one of the great offices in the imperial court. These were attached, as early as the diet of Mentz, in 1184, to the four electors, who ever afterward possessed them: the Duke of Saxony having then officiated as archmarshal, the Count Palatine of the Rhine as arch-steward the King of Bohemia as arch-cup-bearer, and the Margrave of Brandenburg as arch-chamberlain of the empire.† But it still continues a problem why the three latter offices, with the electoral capacity as their incident, should not rather have been granted to the dukes of Franconia, Swabia, and Bavaria. I have seen no adequate explanation of this circumstance; which may perhaps lead us to presume that the right of preelection was not quite so soon confined to the precise number of seven princes. The final extinction of two great original dutchies, Franconia and Swabia, in the thirteenth century, left the electoral rights of the count palatine and the Margrave of Brandenburg beyond dispute. But the dukes of Bavaria continued to claim a vote in opposition to the kings of Bohemia. At the election of Rodolph in 1272 the two brothers of the house of Wittelsach voted separately, as count palatine, and Duke of Lower Bavaria. Ottocar was excluded upon this occasion; and it was not till 1290 that the suffrage of Bohemia was fully recognised. The palatine and Bavarian branches, however, continued to enjoy their family vote conjointly, by a determination of Rodolph; upon which Louis of Bavaria slightly innovated, by rendering the suffrage alternate. But the golden bull of Charles IV. put an end to all doubts on the rights of electoral houses, and absolutely excluded Bavaria from voting. The limitation to seven electors, first perhaps fixed by accident, came to be invested with a sort of mysterious importance, and certainly was considered, until times comparatively recent, as a fundamental law of the empire.*

2. It might appear natural to expect that an oligarchy of seven persons, who had thus excluded their equals from all share in the election of a sovereign, would assume still greater authority, and trespass farther upon the less powerful vassals of the empire. But while the electors were establishing their peculiar privilege, the class immediately inferior raised itself by important acquisitions of power. The German dukes, even after they became hereditary, did not succeed in compelling the chief nobility within their limits to hold their lands in fief so completely as the peers of France had done. The nobles of Swabia refused to follow their duke into the field against the Emperor Conrad II.† Of this aristocracy the superior class were denominated princes; an appellation which, after the eleventh century, distinguished them from the untitled nobility, most of whom were their vassals. They were constituent parts of all diets, and though gradually deprived of their original participation in electing an emperor, possessed in all other respects, the same rights as the dukes or electors. Some of them were fully equal to the electors, in birth as well as extent of dominions; such as the princely houses of Austria, Hesse Brunswick, and Misnia. By the division of Henry the Lion's vast territories,‡ and by the absolute extinction of the Swabian family in the following century, a great many princes acquired additional weight. Of the ancient dutchies only Saxony and Bavaria remained: the former of which especially was so dismembered, that it was vain to attempt any renewal of the

Princes an untitled inferior nobility.

lia, l. xi., c. 9) quotes the style of the act of election from the Chronicle of Francis Pippin.

* This is manifest by the various passages relating to the elections of Philip and Otho, quoted by Struvius, p. 428, 430. See too Pfeffel, ubi supra. Schmidt, t. iv., p. 79.

† Schmidt, t. iv. p. 78.

* Schmidt, t. iv., p. 78, 568. Porter, p. 274. Pfeffel, p. 435, 565. Struvius, p. 511.

† Pfeffel, p. 209.

‡ See the arrangements made in consequence of Henry's forfeiture, which gave quite a new face to Germany, in Pfeffel, p. 234. also p. 437

ducal jurisdiction. That of the emperor, formerly exercised by the counts palatine, went almost equally into disuse during the contest between Philip and Otho IV. The princes accordingly had acted with sovereign independence within their own fiefs before the reign of Frederick II.; but the legal recognition of their immunities was reserved for two edicts of that emperor; one in 1220, relating to ecclesiastical, and the other in 1232, to secular princes. By these he engaged neither to levy the customary imperial dues, nor to permit the jurisdiction of the palatine judges, within the limits of a state of the empire;* concessions that amounted to little less than an abdication of his own sovereignty. From this epoch the territorial independence of the states may be dated.

A class of titled nobility, inferior to the princes, were the counts of the empire, who seem to have been separated from the former in the twelfth century, and to have lost at the same time their right of voting in the diets.† In some parts of Germany, chiefly in Franconia and upon the Rhine, there always existed a very numerous body of lower nobility; untitled, at least till modern times, but subject to no superior except the emperor. These are supposed to have become *immediate*, after the destruction of the house of Swabia, within whose dutchies they had been comprehended.‡

[A. D. 1272.] A short interval elapsed after the death of Richard of Cornwall, before the electors could be induced, by the deplorable state of confusion into which Germany had fallen, to fill the imperial throne. Their choice was however the best that could have been made. It fell upon Rodolph, count of Hapsburg, a prince of very ancient family, and of considerable possessions as well in Switzerland as upon each bank of the upper Rhine, but not sufficiently powerful to alarm the electoral oligarchy. Rodolph was brave, active, and just; but his characteristic quality appears to have been good sense, and judgment of the circumstances in which he was placed. Of this he gave a signal proof in relinquishing the favourite project of so many preceding emperors, and leaving Italy altogether to itself. At home he manifested a vigilant spirit in administering justice, and is said to have destroyed seventy strongholds of noble robbers in Thuringia and other parts, bringing many of the criminals to capital punishment.* But he wisely avoided giving offence to the more powerful princes; and during his reign there were hardly any rebellions in Germany.

Election of Rodolph of Hapsburg.

It was a very reasonable object of every emperor to aggrandize his family by investing his near kindred with vacant fiefs; but no one was so fortunate in his opportunities as Rodolph. At his accession, Austria, Styria, and Carniola were in the hands of Ottocar, king of Bohemia. These extensive and fertile countries had been formed into a march or margraviate, after the victories of Otho the Great over the Hungarians. Frederick Barbarossa erected them into a dutchy with many distinguished privileges, especially that of female succession, hitherto unknown in the feudal principalities of Germany.† Upon the extinction of the house of Bamberg, which had enjoyed this dutchy, it was granted by Frederick II. to a cousin of his own name; after whose death a disputed succession gave rise to several changes, and ultimately enabled Ottocar to gain possession of the country. Against this King of Bohemia Rodolph waged two successive wars, and recovered the Austrian provinces, which, as vacant fiefs, he conferred, with the consent of the diet, upon his son Albert.‡ [A. D. 1283.]

Investmen of his son Albert with dutchy of Austria

* Pfeffel, p. 384. Putter, p. 233.

† In the instruments relating to the election of Otho IV., the princes sign their names, Ego N. elegi et subscripsi. But the counts only as follows: Ego N. consensi et subscripsi.—Pfeffel, p. 360.

‡ Pfeffel, p. 445. Putter, p. 254. Struvius, p. 511

* Struvius, p. 530. Coxe's Hist. of House of Austria, p. 57. This valuable work contains a full and interesting account of Rodolph's reign.

† The privileges of Austria were granted to the Margrave Henry in 1156, by way of indemnity for his restitution of Bavaria to Henry the Lion. The territory between the Inn and the Ems was separated from the latter province, and annexed to Austria at this time. The Dukes of Austria are declared equal in rank to the palatine archdukes (archi-ducibus palatinis). This expression gave a hint to the Duke Rodolph IV. to assume the title of Archduke of Austria.—Schmidt, t. iii., p. 390. Frederick II. even created the Duke of Austria king: a very curious fact, though neither he nor his successors ever assumed the title.—Struvius, p. 463. The instrument runs as follows: Ducatus Austriæ et Styriæ, cum pertinentiis et terminis suis quot hactenus habuit, ad nomen et honorem regium transferentes, te hactenus ducatuum, præ dictorum ducem, de potestatis nostræ plenitudine et magnificentiâ speciali promovemus in regem, pei libertates et jura prædictum regnum tuum præsentis epigrammatis auctoritate donantes, quæ regiam deceant dignitatem: ut tamen ex honore quem tibi libenter addimus, nihil honoris et juris nostri dimanatis aut imperii subtrahatur.

‡ Struvius, p. 525 Schmidt. Coxe

Notwithstanding the merit and popularity of Rodolph, the electors refused to choose his son King of the Romans in his lifetime; and, after his death, determined to avoid the appearance of hereditary succession, put Adolphus of Nassau upon the throne. There is very little to attract notice in the domestic history of the empire during the next two centuries. From Adolphus to Sigismund, every emperor had either to struggle against a competitor, claiming the majority of votes at his election, or against a combination of the electors to dethrone him. The imperial authority became more and more ineffective; yet it was frequently made a subject of reproach against the emperors, that they did not maintain a sovereignty to which no one was disposed to submit.

State of the empire after Rodolph.
Adolphus 1292.
Albert I. 1298.
Henry VII. 1308.
Louis IV. 1314.
Charles IV 1347.
Wenceslaus 1378.
Robert 1400.
Sigismund 1414.

It may appear surprising, that the Germanic confederacy, under the nominal supremacy of an emperor, should have been preserved in circumstances apparently so calculated to dissolve it. But, besides the natural effect of prejudice and a famous name, there were sufficient reasons to induce the electors to preserve a form of government in which they bore so decided a sway. Accident had in a considerable degree restricted the electoral suffrages to seven princes. Without the college, there were houses more substantially powerful than any within it. The dutchy of Saxony had been subdivided by repeated partitions among children, till the electoral right was vested in a prince who possessed only the small territory of Wittenberg. The great families of Austria, Bavaria, and Luxemburg, though not electoral, were the real heads of the German body; and though the two former lost much of their influence for a time through the pernicious custom of partition, the empire seldom looked for its head to any other house than one of these three.

While the dutchies and counties of Germany retained their original character of offices or governments, they were of course, even though considered as hereditary, not subject to partition among children. When they acquired the nature of fiefs, it was still consonant to the principles of a feudal tenure, that the eldest son should inherit according to the law of primogeniture; an inferior provision, or appanage, at most, being reserved for the younger children. The law of England favoured the eldest exclusively; that of France gave him great advantages. But in Germany a different rule began to prevail about the thirteenth century.* An equal partition of the inheritance, without the least regard to priority of birth, was the general law of its principalities. Sometimes this was effected by undivided possession, or tenancy in common, the brothers residing together and reigning jointly. This tended to preserve the integrity of dominion; but as it was frequently incommodious, a more usual practice was to divide the territory. From such partitions are derived those numerous independent principalities of the same house, many of which still subsist in Germany. In 1589, there were eight reigning princes of the palatine family; and fourteen, in 1675, of that of Saxony.† Originally these partitions were in general absolute and without reversion; but, as their effect in weakening families became evident, a practice was introduced of making compacts of reciprocal succession, by which a fief was prevented from escheating to the empire, until all the male posterity of the first feudatary should be extinct. Thus, while the German empire survived, all the princes of Hesse or of Saxony had reciprocal contingencies of succession, or what our lawyers call cross-remainders, to each other's dominions. A different system was gradually adopted. By the Golden Bull of Charles IV., the electoral territory, that is, the particular district to which the electoral suffrage was inseparably attached, became incapable of partition, and was to descend to the eldest son. In the fifteenth century, the present house of Brandenburg set the first example of establishing primogeniture by law; the principalities of Anspach and Bayreuth were dismembered from it for the benefit of younger branches; but it was declared that all the other dominions of the family should for the future belong exclusively to the reigning elector. This politic measure was adopted in several other families; but, even in the sixteenth century, the prejudice was not removed, and some German princes denounced curses on their posterity if they should introduce the impious custom of primogeniture.‡

Custom of partition.

Weakened by these subdivisions, the

* Schmidt, t. iv., p. 66. Pfeffel, p. 289, maintains that partitions were not introduced till the latter end of the thirteenth century. This may be true, as a general rule; but I find the house of Baden divided into two branches, Baden and Hochberg, in 1190, with rights of mutual reversion.

† Pfeffel, ib. Putter. o. 189. ‡ Id., p. 280

principalities of Germany in the fourteenth and fifteenth centuries shrink to a more and more diminutive size in the scale of nations. But one family, the most illustrious of the former age, was less exposed to this enfeebling system. House of Luxemburg. Henry VII., count of Luxemburg, a man of much more personal merit than hereditary importance, was elevated to the empire in 1308. Most part of his short reign he passed in Italy; but he had a fortunate opportunity of obtaining the crown of Bohemia for his son. John, king of Bohemia, did not himself wear the imperial crown; but three of his descendants possessed it with less interruption than could have been expected. His son Charles IV. succeeded Louis of Bavaria in 1347; not indeed without opposition, for a double election and a civil war were matters of course in Germany. Charles IV. has been treated with more derision by his contemporaries, and consequently by later writers, than almost any prince in history; yet he was remarkably successful in the only objects that he seriously pursued. Deficient in personal courage, insensible of humiliation, bending without shame to the pope, to the Italians, to the electors, so poor and so little reverenced as to be arrested by a butcher at Worms for want of paying his demand, Charles IV. affords a proof that a certain dexterity and cold-blooded perseverance may occasionally supply, in a sovereign, the want of more respectable qualities. He has been reproached with neglecting the empire. But he never designed to trouble himself about the empire, except for his private ends. He did not neglect the kingdom of Bohemia, to which he almost seemed to render Germany a province. Bohemia had been long considered as a fief of the empire, and indeed could pretend to an electoral vote by no other title. Charles, however, gave the states by law the right of choosing a king, on the extinction of the royal family, which seems derogatory to the imperial prerogative.* It was much more material that, upon acquiring Brandenburg, partly by conquest and partly by a compact of succession in 1373, he not only invested his sons with it, which was conformable to usage, but annexed that electorate for ever to the kingdom of Bohemia.† He constantly resided at Prague, where he founded a celebrated university, and embellished the city with buildings.

This kingdom, augmented also during his reign by the acquisition of Silesia, he bequeathed to his son Wenceslaus, for whom, by pliancy towards the electors and the court of Rome, he had procured, against all recent example, the imperial succession.*

The reign of Charles IV. is distinguished in the constitutional history of the empire by his Golden Bull; an instrument which finally ascertained the prerogatives of the electoral college. [A. D. 1355.] The Golden Bull terminated the disputes which had arisen between different members of the same house as to their right of suffrage, which was declared inherent in certain definite territories. The number was absolutely restrained to seven. The place of legal imperial elections was fixed at Frankfort; of coronations, at Aix-la-Chapelle; and the latter ceremony was to be performed by the Archbishop of Cologne. These regulations, though consonant to ancient usage, had not always been observed, and their neglect had sometimes excited questions as to the validity of elections. The dignity of elector was enhanced by the Golden Bull as highly as an imperial edict could carry it; they were declared equal to kings, and conspiracy against their persons incurred the penalty of high treason.† Many other privileges are granted to render them more completely sovereign within their dominions. It seems extraordinary that Charles should have voluntarily elevated an oligarchy, from whose pretensions his predecessors had frequently suffered injury. But he had more to apprehend from the two great families of Bavaria and Austria, whom he relatively depressed by giving such a preponderance to the seven electors, than from any members of the college. By this compact with Brandenburg he had a fair prospect of adding a second vote to his own; and there was more room for intrigue and management, which Charles always preferred to arms, with a small number, than with the whole body of princes.

Golden Bull.

The next reign, nevertheless, evinced the danger of investing the electors with such preponderating authority. Wenceslaus, a supine and voluptuous man, less respected, and more negligent of Germany, if pos-

Deposition of Wenceslaus.

* Struvius, p. 641.

* Pfeffel, p. 575. Schmidt, t. iv., p. 595.

* Struvius, p. 637.

† Pfeffel, p. 565. Putter, p. 271. Schmidt, t. iv., p. 566. The Golden Bull not only fixed the palatine vote, in absolute exclusion of Bavaria, but settled a controversy of long standing between the two branches of the house of Saxony, Wittenberg and Lauenberg, in favour of the former

sible, than his father, was regularly deposed by a majority of the electoral college in 1400. This right, if it is to be considered as a right, they had already used against Adolphus of Nassau in 1298, and against Louis of Bavaria in 1346. They chose Robert count palatine instead of Wenceslaus; and though the latter did not cease to have some adherents, Robert has generally been counted among the lawful emperors.* Upon his death the empire returned to the house of Luxemburg; Wenceslaus himself waiving his right in favour of his brother Sigismund, king of Hungary.†

House of Austria. The house of Austria had hitherto given but two emperors to Germany, Rodolph, its founder, and his son Albert, whom a successful rebellion elevated in the place of Adolphus. Upon the death of Henry of Luxemburg, in 1313, Frederick, son of Albert, disputed the election of Louis, duke of Bavaria, alleging a majority of genuine votes. This produced a civil war, in which the Austrian party were entirely worsted. Though they advanced no pretensions to the imperial dignity during the rest of the fourteenth century, the princes of that line added to their possessions Carinthia, Istria, and the Tyrol. As a counterbalance to these acquisitions, they lost a great part of their ancient inheritance by unsuccessful wars with the Swiss. According to the custom of partition, so injurious to princely houses, their dominions were divided among three branches: one reigning in Austria, a second in Styria and the adjacent provinces, a third in the Tyrol and Alsace. [A. D. 1438.]

Albert II. This had in a considerable degree eclipsed the glory of the house of Hapsburg. But it was now its destiny to revive, and to enter upon a career of prosperity which has never since been permanently interrupted. Albert, duke of Austria, who had married Sigismund's only daughter, the queen of Hungary and Bohemia, was raised to the imperial throne upon the death of his father-in-law in 1437. He died in two years, leaving his wife pregnant with a son, Ladislaus Posthumus, who afterward reigned in the two kingdoms just mentioned; and the choice of the electors fell upon Frederick, duke of Styria, second cousin of the last emperor, from whose posterity it never departed, except in a single instance, upon the extinction of his male line in 1740.

Reign of Frederick III. Frederick III. reigned fifty-three years a longer period than any of his predecessors; and his personal character was more insignificant. [A. D. 1440–1493.] With better fortune than could be expected, considering both these circumstances, he escaped any overt attempt to depose him, though such a project was sometimes in agitation. He reigned during an interesting age, full of remarkable events, and big with others of more leading importance. The destruction of the Greek empire, and appearance of the victorious crescent upon the Danube, gave an unhappy distinction to the earlier years of his reign, and displayed his mean and pusillanimous character in circumstances which demanded a hero. At a later season he was drawn into contentions with France and Burgundy, which ultimately produced a new and more general combination of European politics. Frederick, always poor, and scarcely able to protect himself in Austria from the seditions of his subjects, or the inroads of the King of Hungary, was yet another founder of his family, and left their fortunes incomparably more prosperous than at his accession. The marriage of his son Maximilian with the heiress of Burgundy began that aggrandizement of the house of Austria which Frederick seems to have anticipated.* The electors, who had lost a good deal of their former spirit, and were grown sensible of the necessity of choosing a powerful sovereign, made no opposition to Maximilian's becoming king of the Romans in his father's lifetime. The Austrian provinces were reunited, either under Frederick, or in the first years of Maximilian; so that, at the close of that

* Many of the cities, besides some princes, continued to recognise Wenceslaus throughout the life of Robert; and the latter was so much considered as a usurper by foreign states, that his ambassadors were refused admittance at the council of Pisa. —Struvius, p. 658.

† This election of Sigismund was not uncontested: Josse, or Jodocus, margrave of Moravia, having been chosen, as far as appears, by a legal majority. However, his death, within three months, removed the difficulty; and Josse, who was not crowned at Frankfort, has never been reckoned among the emperors, though modern critics agree that his title was legitimate.—Struv., p. 684. Pfeffel, p. 412

* The famous device of Austria, A. E. I. O. U., was first used by Frederick III., who adopted it on his plate, books, and buildings. These initials stand for Austriæ Est Imperare Orbi Universo; or, in German, Alles Erdreich Ist Osterreich Unterthan: a bold assumption for a man who was not safe in an inch of his dominions.—Struvius, p. 722. He confirmed the arch-ducal title of his family, which might seem implied in the original grant of Frederick I., and bestowed other high privileges above all princes of the empire. These are enumerated in Coxe's house of Austria, vol i., p 263

period which we denominate the Middle Ages, the German empire, sustained by the patrimonial dominions of its chief, became again considerable in the scale of nations, and capable of preserving a balance between the ambitious monarchies of France and Spain.

Progress of free imperial cities

The period between Rodolph and Frederick III. is distinguished by no circumstance so interesting as the prosperous state of the free imperial cities, which had attained their maturity about the commencement of that interval. We find the cities of Germany, in the tenth century, divided into such as depended immediately upon the empire, which were usually governed by their bishop as imperial vicar, and such as were included in the territories of the dukes and counts.* Some of the former, lying principally upon the Rhine and in Franconia, acquired a certain degree of importance before the expiration of the eleventh century. Worms and Cologne manifested a zealous attachment to Henry IV., whom they supported in despite of their bishops.† His son Henry V. granted privileges of enfranchisement to the inferior townsmen or artisans, who had hitherto been distinguished from the upper class of freemen, and particularly relieved them from oppressive usages, which either gave the whole of their moveable goods to the lord upon their decease, or at least enabled him to seize the best chattel as his heriot.‡ He took away the temporal authority of the bishop, at least in several instances, and restored the cities to a more immediate dependance upon the empire. The citizens were classed in companies, according to their several occupations; an institution which was speedily adopted in other commercial countries. It does not appear that any German city had obtained, under this emperor, those privileges of choosing its own magistrates, which were conceded about the same time, in a few instances, to those of France ◊ Gradually, however, they began to elect councils of citizens as a sort of senate and magistracy. This innovation might perhaps take place as early as the reign of Frederick I.;* at least it was fully established in that of his grandson. They were at first only assistants to the imperial or episcopal bailiff, who probably continued to administer criminal justice. But, in the thirteenth century, the citizens, grown richer and stronger, either purchased the jurisdiction, or usurped it through the lord's neglect, or drove out the bailiff by force.† The great revolution in Franconia and Swabia occasioned by the fall of the Hohenstauffen family, completed the victory of the cities. Those which had depended upon mediate lords became immediately connected with the empire; and with the empire in its state of feebleness, when an occasional present of money would easily induce its chief to acquiesce in any claims of immunity which the citizens might prefer.

It was a natural consequence of the importance which the free citizens had reached, and of their immediacy, that they were admitted to a place in the diets, or general meetings of the confederacy. They were tacitly acknowledged to be equally sovereign with the electors and princes. No proof exists of any law by which they were adopted into the diet. We find it said that Rodolph of Hapsburg, in 1291, renewed his oath with the princes, lords, and cities Under the Emperor Henry VII. there is unequivocal mention of the three orders composing the diet; electors, princes, and deputies from cities.‡ And, in 1344, they appear as a third distinct college in the diet of Frankfort.◊

The inhabitants of these free cities always preserved their respect for the emperor, and gave him much less vexation than his other subjects. He was indeed their natural friend. But their nobility and prelates were their natural enemies; and the western parts of Germany were the scenes of irreconcilable warfare between the possessors of fortified castles and the inhabitants of fortified cities. Each party was frequently the aggressor.

* Pfeffel, p. 187. The Othos adopted the same policy in Germany which they had introduced in Italy, conferring the temporal government of cities upon the bishops; probably as a counterbalance to the lay aristocracy.—Putter, p. 136. Struvius, p. 252.

† Schmidt, t. iii., p. 239.

‡ Schmidt, p. 242. Pfeffel, p. 293. Dumont, Corps Diplomatique, t. i., p. 64

◊ Schmidt, p. 247

* In the charter granted by Frederick I. to Spire in 1182, confirming and enlarging that of Henry V., though no express mention is made of any municipal jurisdiction, yet it seems implied in the following words: Causam in civitate jam lite contestatam non episcopus aut alia potestas extra civitatem determinari compellet.—Dumont, p. 108

† Schmidt, t. iv., p. 96. Pfeffel, p. 441.

‡ Mansit ibi rex sex hebdomadibus cum principibus electoribus et aliis principibus *et civitatum nuntiis*, de suo transitu et de præstandis servitiis in Italiam disponendo.—Auctor apud Schmidt, t. iv. p. 31.

◊ Pfeffel, p. 552

The nobles were too often mere robbers, who lived upon the plunder of travellers. But the citizens were almost equally inattentive to the rights of others. It was their policy to offer the privileges of burghership to all strangers. The peasantry of feudal lords, flying to a neighbouring town, found an asylum constantly open. A multitude of aliens, thus seeking as it were sanctuary, dwelt in the suburbs or liberties, between the city walls and the palisades which bounded the territory. Hence they were called Pfahlburgher, or burgesses of the palisades; and this encroachment on the rights of the nobility was positively, but vainly prohibited by several imperial edicts, especially the Golden Bull. Another class were the Ausburger, or outburghers, who had been admitted to privileges of citizenship, though resident at a distance, and pretended in consequence to be exempted from all dues to their original feudal superiors. If a lord resisted so unreasonable a claim, he incurred the danger of bringing down upon himself the vengeance of the citizens. These outburghers are in general classed under the general name of Pfahlburgher by contemporary writers.*

Leagues of the cities.

As the towns were conscious of the hatred which the nobility bore towards them, it was their interest to make a common cause, and render mutual assistance From this necessity of maintaining, by united exertions, their general liberty, the German cities never suffered the petty jealousies which might, no doubt, exist among them, to ripen into such deadly feuds as sullied the glory, and ultimately destroyed the freedom, of Lombardy. They withstood the bishops and barons by confederacies of their own, framed expressly to secure their commerce against rapine or unjust exactions of toll. More than sixty cities, with three ecclesiastical electors at their head, formed the league of the Rhine in 1255, to repel the inferior nobility, who, having now become immediate, abused that independence by perpetual robberies.† The Hanseatic Union owes its origin to no other cause, and may be traced perhaps to rather a higher date. About the year 1370, a league was formed, which, though it did not continue so long, seems to have produced more striking effects in Germany. The cities of Swabia and the Rhine united themselves in a strict confederacy against the princes, and especially the families of Wirtemburg and Bavaria. It is said that the Emperor Wenceslaus secretly abetted their projects The recent successes of the Swiss, who had now almost established their republic, inspired their neighbours in the empire with expectations which the event did not realize; for they were defeated in this war, and ultimately compelled to relinquish their league. Counter-associations were formed by the nobles, styled society of St. George, St. William the Lion, or the Panther.*

Provincial states of the empire.

The spirit of political liberty was not confined to the free immediate cities. In all the German principalities, a form of limited monarchy prevailed, reflecting, on a reduced scale, the general constitution of the empire. As the emperors shared their legislative sovereignty with the diet, so all the princes who belonged to that assembly had their own provincial states composed of their feudal vassals, and of their mediate towns within their territory. No tax could be imposed without consent of the states; and, in some countries, the prince was obliged to account for the proper disposition of the money granted. In all matters of importance affecting the principality, and especially in cases of partition, it was necessary to consult them; and they sometimes decided between competitors in a disputed succession, though this indeed more strictly belonged to the emperor. The provincial states concurred with the prince in making laws, except such as were enacted by the general diet. The city of Wurtzburgh, in the fourteenth century, tells its bishop, that if a lord would make any new ordinance, the custom is that he must consult the citizens, who have always opposed his innovating upon the ancient laws without their consent.†

Alienation of the imperial domain

The ancient imperial domain, or possessions which belonged to the chief of the empire as such, had originally been very extensive. Besides large estates in every province, the territory upon each bank of the Rhine, afterward occupied by the counts palatine and ecclesiastical electors, was, until the thirteenth century, an exclusive property of the emperor. This imperial domain was deemed so adequate to the support of his dignity, that it was usual, if not obligatory for him to grant

* Schmidt, t. iv., p. 98; t. vi., p. 76. Pfeffel, p. 402. Du Cange, Gloss. v. Pfalburger. Fauxbourg is derived from this word.

† Struvius, p. 498. Schmidt, t. iv., p. 101. Pfeffel p. 416

* Struvius, p. 649. Pfeffel, p 586 Schmidt, v., p. 10; t. vi., p. 78. Putter, p. 293

† Schmidt, t. vi., p. 8. Putter, p. 236

away his patrimonial domains upon his election. But the necessities of Frederick II., and the long confusion that ensued upon his death, caused the domain to be almost entirely dissipated. Rodolph made some efforts to retrieve it, but too late; and the poor remains of what had belonged to Charlemagne and Otho were alienated by Charles IV.* This produced a necessary change in that part of the constitution which deprived an emperor of hereditary possessions. It was, however, some time before it took place. Even Albert I. conferred the dutchy of Austria upon his sons when he was chosen emperor.† Louis of Bavaria was the first who retained his hereditary dominions, and made them his residence.‡ Charles IV. and Wenceslaus lived almost wholly in Bohemia; Sigismund chiefly in Hungary; Frederick III. in Austria. This residence in their hereditary countries, while it seemed rather to lower the imperial dignity, and to lessen their connexion with the general confederacy, gave them intrinsic power and influence. If the emperors of the houses of Luxemburg and Austria were not like the Conrads and Fredericks, they were at least very superior in importance to the Williams and Adolphuses of the thirteenth century.

Accession of Maximilian. Diet of Worms.

[A. D. 1495.] The accession of Maximilian nearly coincides with the expedition of Charles VIII. against Naples and I should here close the German history of the middle age, were it not for the great epoch which is made by the diet of Worms, in 1495. This assembly is celebrated for the establishment of a perpetual public peace, and of a paramount court of justice, the Imperial Chamber.

Establishment of public peace.

The same causes which produced continual hostilities among the French nobility were not likely to operate less powerfully on the Germans, equally warlike with their neighbours, and rather less civilized. But while the imperial government was still vigorous, they were kept under some restraint. We find Henry III., the most powerful of the Franconian emperors, forbidding all private defiances, and establishing solemnly a general peace.* After his time, the natural tendency of manners overpowered all attempts to coerce it, and private war raged without limits in the empire. Frederick I. endeavoured to repress it by a regulation which admitted its legality. This was the law of defiance (jus diffidationis), which required a solemn declaration of war, and three days' notice, before the commencement of hostile measures. All persons contravening this provision were deemed robbers, and not legitimate enemies.† Frederick II. carried the restraint farther, and limited the right of self-redress to cases where justice could not be obtained. Unfortunately there was, in later times, no sufficient provision for rendering justice. The German empire indeed had now assumed so peculiar a character, and the mass of states who composed it were in so many respects sovereign within their own territories, that wars, unless in themselves unjust, could not be made a subject of reproach against them, nor considered, strictly speaking, as private. It was certainly most desirable to put an end to them by common agreement, and by the only means that could render war unnecessary, the establishment of a supreme jurisdiction. War indeed, legally undertaken, was not the only, nor the severest grievance. A very large proportion of the rural nobility lived by robbery ‡. Their castles, as the ruins still bear witness, were erected upon inaccessible hills, and in defiles that command the public road. An archbishop of Cologne having built a fortress of this kind, the governor inquired how he was to maintain himself, no revenue having been assigned for that purpose. The prelate only desired him to remark that the castle was situated near the junction of four roads.§ As commerce increased, and the example of French and Italian civilization rendered the Germans more sensible to their own rudeness, the preservation of public peace was loudly demanded. Every diet under Frederick III. professed to occupy itself with the two great objects of domestic reformation, peace and law. Temporary

* Pfeffel, p. 580.
† Idem, p. 494. Struvius, p. 546.
‡ Struvius, p. 611. In the capitulation of Robert, it was expressly provided that he should retain any escheated fief for the domain, instead of granting it away; so completely was the public policy of the empire reversed.—Schmidt, t. v., p. 44.

* Pfeffel, p. 212.
† Schmidt, t. iv., p. 108, et infra. Pfeffel, p. 346 Putter, p. 205.
‡ Germani atque Alemanni, quibus census patrimonii ad victum suppetit, et hos qui procul ubibus, aut qui castellis et oppidulis dominantur, *quorum magna pars latrocinio deditur*, nobiles censent —Pet. de Andlo. apud Schmidt, t. v., p. 490.
§ Quem cum officiatus suus interrogans, de quo castrum deberit retinere, cum annuis careret reditibus, dicitur respondisse: Quatuor viæ sunt transcastrum situatæ.—Auctor apud Schmidt, p. 492.

cessations, during which all private hostility was illegal, were sometimes enacted; and, if observed, which may well be doubted, might contribute to accustom men to habits of greater tranquillity. The leagues of the cities were probably more efficacious checks upon the disturbers of order. In 1486 a ten years' peace was proclaimed, and before the expiration of this period the perpetual abolition of the right of defiance was happily accomplished in the diet of Worms.*

These wars, incessantly waged by the states of Germany, seldom ended in conquest. Very few princely houses of the middle ages were aggrandized by such means. That small and independent nobility, the counts and knights of the empire, whom the unprincipled rapacity of our own age has annihilated, stood through the storms of centuries with little diminution of their numbers. An incursion into the enemy's territory, a pitched battle, a siege, a treaty, are the general circumstances of the minor wars of the middle ages, as far as they appear in history. Before the invention of artillery, a strongly fortified castle, or walled city, was hardly reduced except by famine, which a besieging army, wasting improvidently its means of subsistence, was full as likely to feel. That invention altered the condition of society, and introduced an inequality of forces, that rendered war more inevitably ruinous to the inferior party. Its first and most beneficial effect was to bring the plundering class of the nobility into control; their castles were more easily taken, and it became their interest to deserve the protection of law. A few of these continued to follow their own profession after the diet of Worms; but they were soon overpowered by the more efficient police established under Maximilian.

Imperial Chamber.

The next object of the diet was to provide an effectual remedy for private wrongs which might supersede all pretence for taking up arms. The administration of justice had always been a high prerogative, as well as bounden duty, of the emperors. It was exercised originally by themselves in person, or by the count palatine, the judge who always attended their court. In the provinces of Germany, the dukes were intrusted with this duty: but, in order to control their influence, Otho the Great appointed provincial counts palatine, whose jurisdiction was in some respects exclusive of that still possessed by the dukes. As the latter became more independent of the empire, the provincial counts palatine lost the importance of their office, though their name may be traced to the twelfth and thirteenth centuries.* The ordinary administration of justice by the emperors went into disuse; in cases where states of the empire were concerned, it appertained to the diet, or to a special court of princes. The first attempt to re-establish an imperial tribunal was made by Frederick II. in a diet held at Mentz in 1235. A judge of the court was appointed to sit daily, with certain assessors, half nobles, half lawyers, and with jurisdiction over all causes where princes of the empire were not concerned.† Rodolph of Hapsburg endeavoured to give efficacy to this judicature; but, after his reign, it underwent the fate of all those parts of the Germanic constitution which maintained the prerogatives of the emperors. Sigismund endeavoured to revive this tribunal; but, as he did not render it permanent, nor fix the place of its sittings, it produced little other good than as it excited an earnest anxiety for a regular system. This system, delayed throughout the reign of Frederick III., was reserved for the first diet of his son.‡

The Imperial Chamber, such was the name of the new tribunal, consisted, at its original institution, of a chief judge, who was to be chosen among the princes or counts, and of sixteen assessors, partly of noble or equestrian rank, partly professors of law. They were named by the emperor with the approbation of the diet. The functions of the Imperial Chamber were chiefly the two following. They exercised an appellant jurisdiction over causes that had been decided by the tribunals established in states of the empire. But their jurisdiction in private causes was merely appellant. According to the original law of Germany, no man could be sued except in the nation or province to which he belonged. The early emperors travelled from one part of their dominions to another, in order to render justice consistently with this fundamental privilege. When the Luxemburg emperors fixed their residence in Bohemia, the jurisdiction of the imperial court in the first instance would have ceased of itself by the operation of this ancient rule. It was not, however strictly complied with; and it is said that

* Schmidt, t. iv., p. 116; t. v., p. 338, 371; t. vi., 34 Putter, p. 292, 348.

* Pfeffel, p. 180.
† Idem, p. 386. Schmidt, t. iv., p. 56
‡ Pfeffel, t. ii., p. 66

the emperors had a concurrent jurisdiction with the provincial tribunals even in private causes. They divested themselves, nevertheless, of this right, by granting privileges *de non evocando;* so that no subject of a state which enjoyed such a privilege could be summoned into the imperial court. All the electors possessed this exemption by the terms of the Golden Bull; and it was specially granted to the burgraves of Nuremberg, and some other princes. This matter was finally settled at the diet of Worms; and the Imperial Chamber was positively restricted from taking cognizance of any causes in the first instance, even where a state of the empire was one of the parties. It was enacted, to obviate the denial of justice that appeared likely to result from the regulation in the latter case, that every elector and prince should establish a tribunal in his own dominions, where suits against himself might be entertained.*

The second part of the chamber's jurisdiction related to disputes between two states of the empire. But these two could only come before it by way of appeal. During the period of anarchy which preceded the establishment of its jurisdiction, a custom was introduced, in order to prevent the constant recurrence of hostilities, of referring the quarrels of states to certain arbitrators, called Austregues, chosen among states of the same rank. This conventional reference became so popular that the princes would not consent to abandon it on the institution of the Imperial Chamber; but, on the contrary, it was changed into an invariable and universal law, that all disputes between different states must, in the first instance, be submitted to the arbitration of Austregues.†

Establishment of circles.

The sentence of the chamber would have been very idly pronounced, if means had not been devised to carry them into execution. In earlier times the want of coercive process had been more felt than that of actual jurisdiction. For a few years after the establishment of the chamber, this deficiency was not supplied. But in 1501 an institution, originally planned under Wenceslaus, and attempted by Albert II., was carried into effect. The empire, with the exception of the electorates and the Austrian dominions, was divided into six circles; each of which had its council of states, its director, whose province it was to convoke them, and its military force to compel obedience. In 1512 four more circles were added, comprehending those states which had been excluded in the first division. It was the business of the police of the circles to enforce the execution of sentences pronounced by the Imperial Chamber against refractory states of the empire.*

Aulic Council

As the judges of the Imperial Chamber were appointed with the consent of the diet, and held their sittings in a free imperial city, its establishment seemed rather to encroach on the ancient prerogatives of the emperors. Maximilian expressly reserved these in consenting to the new tribunal. And, in order to revive them, he soon afterward instituted an Aulic Council at Vienna, composed of judges appointed by himself, and under the political control of the Austrian government. Though some German patriots regarded this tribunal with jealousy, it continued until the dissolution of the empire. The Aulic Council had, in all cases, a concurrent jurisdiction with the Imperial Chamber; an exclusive one in feudal and some other causes. But it was equally confined to cases of appeal; and these, by multiplied privileges de non appellando, granted to the electoral and superior princely houses, were gradually reduced into moderate compass.†

The Germanic constitution may be reckoned complete, as to all its essential characteristics, in the reign of Maximilian. In later times, and especially by the treaty of Westphalia, it underwent several modifications. Whatever might be its defects, and many of them seem to have been susceptible of reformation without destroying the system of government, it had one invaluable excellence: it protected the rights of the weaker against the stronger powers. The law of nations was first taught in Germany, and grew out of the public law of the empire. To narrow, as far as possible, the rights of war and of conquest, was a natural principle of those who belonged to petty states, and had nothing to tempt them in ambition. No revolution of our own eventful age, except the fall of the ancient French system of government, has been so extensive, or so likely to produce important consequences, as the spontaneous dissolution of the German empire. Whether the new confederacy that has been substituted for that venerable constitution will be equally favourable to

* Schmidt, t. v., p. 373. Putter, p. 372.
† Putter, p. 361. Pfeffel, p. 452.

* Putter, p. 355. Pfeffel, t. ii., p. 100.
† Idem, p. 357. Pfeffel, p. 102.

peace, justice, and liberty, is among the most interesting and difficult problems that can occupy a philosophical observer.*

Limits of the empire.

At the accession of Conrad the First, Germany had by no means reached its present extent on the eastern frontier. Henry the Fowler and the Othos made great acquisitions upon that side. But tribes of Sclavonian origin, generally called Venedic, or, less properly, Vandal, occupied the northern coast from the Elbe to the Vistula. These were independent and formidable both to the kings of Denmark and princes of Germany, till, in the reign of Frederick Barbarossa, two of the latter, Henry the Lion, duke of Saxony, and Alberi the Bear, margrave of Brandenburg, subdued Mecklenburg and Pomerania, which afterward became dutchies of the empire. Bohemia was undoubtedly subject, in a feudal sense, to Frederick I. and his successors, though its connexion with Germany was always slight. The emperors sometimes assumed a sovereignty over Denmark, Hungary, and Poland. But what they gained upon this quarter was compensated by the gradual separation of the Netherlands from their dominion, and by the still more complete loss of the kingdom of Arles. The house of Burgundy possessed most part of the former, and paid as little regard as possible to the imperial supremacy; though the German diets in the reign of Maximilian still continued to treat the Netherlands as equally subject to their lawful control with the states on the right bank of the Rhine. But the provinces between the Rhone and the Alps were absolutely separated; Switzerland has completely succeeded in establishing her own independence; and the kings of France no longer sought even the ceremony of an imperial investiture for Dauphiné and Provence.

Bohemia—its constitution.

Bohemia, which received the Christian faith in the tenth century, was elevated to the rank of a kingdom near the end of the twelfth. The dukes and kings of Bohemia were feudally dependant upon the emperors, from whom they received investiture. They possessed, in return, a suffrage among the seven electors, and held one of the great offices in the imperial court. But, separated by a rampart of mountains, by a difference of origin and language, and perhaps by national prejudices, from Germany, the Bohemians withdrew as far as possible from the general politics of the confederacy. The kings obtained dispensations from attending the diets of the empire, nor were they able to reinstate themselves in the privilege thus abandoned till the beginning of the last century.* The government of this kingdom, in a very slight degree partaking of the feudal character,† bore rather a resemblance to that of Poland; but the nobility were divided into two classes, the baronial and the equestrian, and the burghers formed a third state in the national diet. For the peasantry, they were in a condition of servitude, or predial villanage. The royal authority was restrained by a coronation oath, by a permanent senate, and by frequent assemblies of the diet, where a numerous and armed nobility appeared to secure their liberties by law or force.‡ The sceptre passed, in ordinary times, to the nearest heir of the royal blood; but the right of election was only suspended, and no king of Bohemia ventured to boast of it as his inheritance.§ This mixture of elective and hereditary monarchy was common, as we have seen, to most European kingdoms in their original constitution, though few continued so long to admit the participation of popular suffrages.

House of Luxemburg

The reigning dynasty having become extinct, in 1306, by the death of Wenceslaus, son of that Ottocar, who, after extending his conquests to the Baltic Sea, and almost to the Adriatic, had lost his life in an unsuccessful contention with the Emperor Rodolph, the Bohemians chose John of Luxemburg, son of Henry VII. Under the kings of this family in the fourteenth century, and especially Charles IV., whose character appeared in a far more advantageous light in his native domains than in the empire, Bohemia imbibed some portion of refinement and science.‖ A university, erected by Charles at Prague, became one of

* Pfeffel, t. ii., p. 497.

† Bona ipsorum totâ Bohemiâ pleraque omnia hæreditaria sunt seu allodialia, perpauca feudalia.—Stransky, Resp. Bohemica, p. 392. Stransky was a Bohemian Protestant, who fled to Holland after the subversion of the civil and religious liberties of his country by the fatal battle of Prague, in 1621.

‡ Dubravius, the Bohemian historian, relates (lib. xviii.) that the kingdom having no written laws, Wenceslaus, one of the kings, about the year 1300, sent for an Italian lawyer to compile a code. But the nobility refused to consent to this; aware, probably, of the consequences of letting in the prerogative doctrines of the civilians. They opposed, at the same time, the institution of a university at Prague, which, however, took place afterward under Charles IV.

§ Stransky, Resp. Bohem. Coxe's House of Austria, p. 487.

‖ Schmidt. Coxe.

* The first edition of this work was published early in 1818.

the most celebrated in Europe. [A. D. 1416.] John Huss, rector of the university, who had distinguished himself by opposition to many abuses then prevailing in the church, repaired to the council of Constance, under a safe conduct from the Emperor Sigismund. In violation of this pledge, to the indelible infamy of that prince and of the council, he was condemned to be burnt; and his disciple, Jerome of Prague, underwent afterward the same fate. His countrymen, aroused by this atrocity, flew to arms. They found at their head one of those extraordinary men, whose genius, created by nature and called into action by fortuitous events, appears to borrow no reflected light from that of others. John Zisca had not been trained in any school which could have initiated him in the science of war; that, indeed, except in Italy, was still rude, and nowhere more so than in Bohemia. But, self-taught, he became one of the greatest captains who had appeared hitherto in Europe. It renders his exploits more marvellous, that he was totally deprived of sight. Zisca has been called the inventor of the modern art of fortification; the famous mountain near Prague, fanatically called Tabor, became, by his skill, an impregnable intrenchment. For his stratagems he has been compared to Hannibal. In battle, being destitute of cavalry, he disposed at intervals ramparts of carriages filled with soldiers, to defend his troops from the enemy's horse. His own station was by the chief standard; where, after hearing the circumstances of the situation explained, he gave his orders for the disposition of the army. Zisca was never defeated; and his genius inspired the Hussites with such enthusiastic affection, that some of those who had served under him refused to obey any other general, and denominated themselves Orphans, in commemoration of his loss. He was indeed a ferocious enemy, though some of his cruelties might, perhaps, be extenuated by the law of retaliation; but to his soldiers affable and generous, dividing among them all the spoil.*

John Huss.

Hussite war.

John Zisca.

[A. D. 1424.] Even during the lifetime of Zisca, the Hussite sect was dismnited; the citizens of Prague and many of the nobility contenting themselves with moderate demands, while the Taborites, his peculiar followers, were actuated by a most fanatical phrensy. The former took the name of Calixtins from their retention of the sacramental cup, of which the priests had latterly thought fit to debar laymen; an abuse indeed not sufficient to justify a civil war, but so totally without pretence or apology, that nothing less than the determined obstinacy of the Romish church could have maintained it to this time. The Taborites, though no longer led by Zisca, gained some remarkable victories, but were at last wholly defeated; while the Catholic and Calixtin parties came to an accommodation, by which Sigismund was acknowledged as King of Bohemia, which he had claimed by the title of heir to his brother Wenceslaus, and a few indulgences, especially the use of the sacramental cup, conceded to the moderate Hussites. [A. D. 1433.] But this compact, though concluded by the council of Basle, being ill observed through the perfidious bigotry of the See of Rome, the reformers armed again to defend their religious liberties, and ultimately elected a nobleman of their own party [A. D. 1458], by name George Podiebrad, to the throne of Bohemia, which he maintained during his life with great vigour and prudence.* Upon his death they chose Uladislaus [A. D. 1471], son of Casimir, king of Poland, who afterward obtained also the kingdom of Hungary. [A. D. 1527.] Both these crowns were conferred on his son Louis, after whose death, in the unfortunate battle of Mohacz, Ferdinand of Austria became sovereign of the two kingdoms.

Calixtins

The Hungarians, that terrible people who laid waste the Italian and German provinces of the empire in the tenth century, became proselytes soon afterward to the religion of Europe, and their sovereign, St. Stephen, was admitted by the pope into the list of Christian kings. Though the Hungarians were of a race perfectly distinct from either the Gothic or the Sclavonian tribes, their system of government was in a great measure analogous. None indeed could be more natural to rude nations, who had but recently accustomed themselves to settled possessions, than a territorial aristocracy, jealous of unlimited or even hereditary power in their chieftain, and subjugating the inferior people to that servitude, which, in such a state of society, is the unavoidable consequence of poverty.

Hungary

The marriage of an Hungarian princess with Charles II., king of Naples, eventually connected her country far more

* Lenfant, Hist. de la Guerre des Hussites. Schmidt. Coxe.

* Lenfant. Schmidt. Coxe

than it had been with the affairs of Italy. I have mentioned in a different place the circumstances which led to the invasion of Naples by Louis, king of Hungary, and the wars of that powerful monarch with Venice. [A. D. 1392.] By marrying the eldest daughter of Louis, Sigismund, afterward emperor, acquired the crown of Hungary, which, upon her death without issue, he retained in his own right, and was even able to transmit to the child of a second marriage, and to her husband, Albert, duke of Austria. From this commencement is deduced the connexion between Hungary and Austria. [A. D. 1437.] In two years, however, Albert, dying, left his widow pregnant; but the states of Hungary, jealous of Austrian influence, and of the intrigues of a minority, without waiting for her delivery, bestowed the crown upon Uladislaus, king of Poland. [A. D. 1440.] The birth of Albert's posthumous son, Ladislaus, produced an opposition in behalf of the infant's right; but the Austrian party turned out the weaker, and Uladislaus, after a civil war of some duration, became undisputed king. Meanwhile a more formidable enemy drew near. The Turkish arms had subdued all Servia, and excited a just alarm throughout Christendom. Uladislaus led a considerable force, to which the presence of the Cardinal Julian gave the appearance of a crusade, into Bulgaria, and after several successes, concluded an honourable treaty with Amurath II. [A. D. 1444.] But this he was unhappily persuaded to violate, at the instigation of the cardinal, who abhorred the impiety of keeping faith with infidels.* Heaven judged of this otherwise, if the judgment of Heaven was pronounced upon the field of Warna. In that fatal battle Uladislaus was killed, and the Hungarians utterly routed. The crown was now permitted to rest on the head of young Ladislaus; but the regency was allotted by the states of Hungary to a native warrior, John Hunniades.† This hero stood in the breach for twelve years against the Turkish power, frequently defeated, but unconquered in defeat. If the renown of Hunniades may seem exaggerated by the partiality of writers who lived under the reign of his son, it is confirmed by more unequivocal evidence, by the dread and hatred of the Turks, whose children were taught obedience by threatening them with his name, and by the deference of a jealous aristocracy to a man of no distinguished birth. He surrendered to young Ladislaus a trust that he had exercised with perfect fidelity; but his merit was too great to be forgiven, and the court never treated him with cordiality. The last, and the most splendid service of Hunniades, was the relief of Belgrade. [A. D. 1456.] That strong city was besieged by Mahomet II., three years after the fall of Constantinople; its capture would have laid open all Hungary. A tumultuary army, chiefly collected by the preaching of a friar, was intrusted to Hunniades; he penetrated into the city, and having repulsed the Turks in a fortunate sally, wherein Mahomet was wounded, had the honour of compelling him to raise the siege in confusion. The relief of Belgrade was more important in its effect than in its immediate circumstances. It revived the spirits of Europe, which had been appalled by the unceasing victories of the infidels. Mahomet himself seemed to acknowledge the importance of the blow, and seldom afterward attacked the Hungarians. Hunniades died soon after this achievement, and was followed by the King Ladislaus.* The states of Hungary, although the Emperor Frederick III. had secured to himself, as he thought, the re-

Sigismund.

Uladislaus.

Battle of Warna.

Hunniades.

Relief of Belgrade

* Æneas Sylvius lays this perfidy on Pope Eugenius IV. Scripsit Cardinali, nullum valere fœdus, quod *se inconsulto* cum hostibus religionis percussum esset, p. 397. The words in italics are slipped in to give a slight pretext for breaking the treaty.

† Hunniades was a Wallachian, of a small family. The Poles charged him with cowardice at Warna.—(Æneas Sylvius, p. 398.) And the Greeks impute the same to him, or at least desertion of his troops, at Cossova, where he was defeated in 1418. (Spondanus, ad ann. 1448.) Probably he was one of those prudently brave men, who, when victory is out of their power, reserve themselves to fight another day; which is the characteristic of all partisans accustomed to desultory warfare. This is the apology made for him by Æneas Sylvius: forte rei militaris perito nulla in pugnâ salus visa et salvare aliquos quàm omnes perire maluit. Poloni acceptam eo prælio cladem Huniadis vecordiæ atque ignaviæ tradiderunt; ipse sua consilia spreta conquestus est. I observe that all the writers upon Hungarian affairs have a party bias one way or other. The best and most authentic account of Hunniades seems to be, still allowing for this partiality, in the chronicle of John Thwrocz, who lived under Matthias. Bonfinius, an Italian compiler of the same age, has amplified this original authority in his three decads of Hungarian history.

* Ladislaus died at Prague, at the age of twenty-two, with great suspicion of poison, which fell chiefly on George Podiebrad and the Bohemians. Æneas Sylvius was with him at the time, and in a letter written immediately after, plainly hints this, and his manner carries with it more persuasion than if he had spoken out.—Epist. 324. Mr. Coxe however, informs us that the Bohemian historians have fully disproved the charge.

version, were justly averse to his character, and to Austrian connexions. They conferred their crown on Matthias Corvinus, son of their great Hunniades. [A. D. 1458.] This prince reigned above thirty years with considerable reputation, to which his patronage of learned men, who repaid his munificence with very profuse eulogies, did not a little contribute.* Hungary, at least in his time, was undoubtedly formidable to her neighbours, and held a respectable rank as an independent power in the republic of Europe.

Matthias Corvinus.

The kingdom of Burgundy or Arles comprehended the whole mountainous region which we now call Swisserland. It was accordingly reunited to the Germanic empire by the bequest of Rodolph along with the rest of his dominions. [A. D. 1032.] A numerous and ancient nobility, vassals one to another, or to the empire, divided the possession with ecclesiastical lords, hardly less powerful than themselves. Of the former we find the counts of Zahringen, Kyburg, Hapsburg, and Tokenburg most conspicuous; of the latter, the Bishop of Coire, the Abbot of St. Gall, and Abbess of Seckingen. Every variety of feudal rights was early found and long preserved in Helvetia: nor is there any country whose history better illustrates that ambiguous relation, half property and half dominion, in which the territorial aristocracy, under the feudal system, stood with respect to their dependants. In the twelfth century, the Swiss towns rise into some degree of importance. Zuric was eminent for commercial activity, and seems to have had no lord but the emperor. Basle, though subject to its bishop, possessed the usual privileges of municipal government. Berne and Friburg, founded only in that century, made a rapid progress, and the latter was raised, along with Zuric, by Frederick II., in 1218, to the rank of a free imperial city. Several changes in the principal Helvetian families took place in the thirteenth century, before the end of which the house of Hapsburg, under the politic and enterprising Rodolph, and his son Albert, became possessed, through various titles, of a great ascendency in Swisserland.*

Swisserland—its early history.

Of these titles none was more tempting to an ambitious chief than that of advocate to a convent. That specious name conveyed with it a kind of indefinite guardianship, and right of interference, which frequently ended in reversing the conditions of the ecclesiastical sovereign and its vassal. But, during times of feudal anarchy, there was perhaps no other means to secure the rich abbeys from absolute spoliation; and the free cities in their early stage sometimes adopted the same policy. Among other advocacies, Albert obtained that of some convents which had estates in the valleys of Schwitz and Underwald. These sequestered regions in the heart of the Alps had been for ages the habitation of a pastoral race, so happily forgotten, or so inaccessible in their fastnesses, as to have acquired a virtual independence, regulating their own affairs in their general assembly with a perfect equality, though they acknowledged the sovereignty of the empire.† The people of Schwitz had made Rodolph their advocate. They distrusted Albert, whose succession to his father's inheritance spread alarm through Helvetia. It soon appeared that their suspicions were well founded. Besides the local rights which his ecclesiastical advocates gave him over part of the forest cantons, he pretended, after his election to the empire, to send imperial bailiffs into their valleys, as administrators of criminal justice. Their oppression of a people unused to control, whom it was plainly the design of Albert to reduce into servitude, excited those generous emotions of resentment which a brave and simple race have seldom the discretion to repress. Three men, Stauffacher of Schwitz, Furst of Uri, Melchthal of Underwald, each with ten chosen associates, met by night in a sequestered field, and swore to assert the common cause of their liberties, without bloodshed or injury to the rights of others. Their success was answerable to the justice of their undertaking; the three cantons unanimously took up arms, and expelled their oppressors without a contest. [A. D. 1308.] Albert's assassination by his nephew, which followed soon afterward fortunately gave them leisure to consol-

Albert of Austria.

The Swiss.

Their insurrection.

* Spondanus frequently blames the Italians, who received pensions from Matthias, or wrote at his court, for exaggerating his virtues or dissembling his misfortunes. And this was probably the case. However, Spondanus has rather contracted a prejudice against the Corvini. A treatise of Galeotus Martius, an Italian *littérateur*, De dictis et factis Mathiæ, though it often notices an ordinary saying as jocosè or facetè dictum, gives a favourable impression of Matthias's ability, and also of his integrity.

* Planta's History of the Helvetic Confederacy, vol. i., chaps. 2–5.

† Id., c. 1.

idate their union.* He was succeeded in the empire by Henry VII., jealous of the Austrian family, and not at all displeased at proceedings which had been accompanied with so little violence or disrespect for the empire. But Leopold, duke of Austria, resolved to humble the peasants who had rebelled against his father, led a considerable force into their country. The Swiss, commending themselves to Heaven, and determined rather to perish than undergo that yoke a second time, though ignorant of regular discipline and unprovided with defensive armour, utterly discomfited the assailants at Morgarten.† [A. D. 1315.]

Battle of Morgarten.

This great victory, the Marathon of Swisserland, confirmed the independence of the three original cantons. After some years, Lucerne, contiguous in situation and alike in interests, was incorporated into their confederacy. It was far more materially enlarged about the middle of the fourteenth century, by the accession of Zuric, Glaris, Zug, and Berne, all which took place within two years. The first and last of these cities had already been engaged in frequent wars with the Helvetian nobility, and their internal polity was altogether republican.‡ They acquired, not independence, which they already enjoyed, but additional security by this union with the Swiss, properly so called, who, in deference to their power and reputation, ceded to them the first rank in the league. The eight already enumerated are called the ancient cantons, and continued till the late reformation of the Helvetic system to possess several distinctive privileges, and even rights of sovereignty over subject territories, in which the five cantons of Friburg, Soleure, Basle, Schaffausen, and Appenzel, did not participate. From this time the united cantons, but especially those of Berne and Zuric, began to extend their territories at the expense of the rural nobility. The same contest between these parties, with the same termination, which we know generally to have taken place in Lombardy during the eleventh and twelfth centuries, may be traced with more minuteness in the annals of Swisserland.§ Like the Lombards too, the Helvetic cities acted with policy and moderation towards the nobles whom they overcame, admitting them to the franchises of their community, as co-

Formation of Swiss Confederacy.

burghers (a privilege which virtually implied a defensive alliance against any assailant), and uniformly respecting the legal rights of property. Many feudal superiorities they obtained from the owners in a more peaceable manner, through purchase or mortgage. Thus the house of Austria, to which the extensive domains of the counts of Kyburg had devolved, abandoning, after repeated defeats, its hopes of subduing the forest cantons, alienated a great part of its possessions to Zuric and Berne.* And the last remnant of their ancient Helvetic territories in Argovia was wrested in 1417 from Frederick, count of Tyrol, who, imprudently supporting Pope John XXIII. against the council of Constance, had been put to the ban of the empire. These conquests Berne could not be induced to restore, and thus completed the independence of the confederate republics.† The other free cities, though not yet incorporated, and the few remaining nobles, whether lay or spiritual, of whom the abbot of St. Gall was the principal, entered into separate leagues with different cantons. Swisserland became therefore, in the first part of the fifteenth century, a free country, acknowledged as such by neighbouring states, and subject to no external control, though still comprehended within the nominal sovereignty of the empire.

The affairs of Swisserland occupy a very small space in the great chart of European history But in some respects they are more interesting than the revolutions of mighty kingdoms. Nowhere besides do we find so many titles to our sympathy, or the union of so much virtue with so complete success. In the Italian republics, a more splendid temple may seem to have been erected to liberty; but, as we approach, the serpents of faction hiss around her altar, and the form of tyranny flits among the distant shadows behind the shrine. Swisserland, not absolutely blameless (for what republic has been so?), but comparatively exempt from turbulence, usurpation, and injustice, has well deserved to employ the native pen of an historian, accounted the most eloquent of the last age ‡ Other nations

* Planta, c. 6.
† Id., c. 7.
‡ Id., cc 8, 9.
§ Id., c. 10.

* Planta, c. 11.
† Vol. ii., c. 1.
‡ I am unacquainted with Muller's history in the original language; but, presuming the first volume of Mr. Planta's History of the Helvetic Confederacy to be a free translation or abridgment of it, I can well conceive that it deserves the encomiums of Madame de Staël, and other foreign critics. It is very rare to meet with such picturesque and lively delineation in a modern historian of distant times But I must observe, that, if the authentic chroni

displayed an insuperable resolution in the defence of walled towns; but the steadiness of the Swiss in the field of battle was without a parallel, unless we recall the memory of Lacedæmon. It was even established as a law, that whoever returned from battle after a defeat should forfeit his life by the hands of the executioner. Sixteen hundred men, who had been sent to oppose the predatory invasion of the French in 1444, though they might have retreated without loss, determined rather to perish on the spot, and fell amid a far greater heap of the hostile slain.* At the famous battle of Sempach, in 1385, the last which Austria presumed to try against the forest cantons, the enemy's knights, dismounted from their horses, presented an impregnable barrier of lances, which disconcerted the Swiss; till Winkelried, a gentleman of Underwald, commending his wife and children to his countrymen, threw himself upon the opposite ranks, and collecting as many lances as he could grasp, forced a passage for his followers by burying them in his bosom.†

Excellence of the Swiss troops.

The burghers and peasants of Switzerland, ill provided with cavalry, and better able to dispense with it than the natives of champaign countries, may be deemed the principal restorers of the Greek and Roman tactics, which place the strength of armies in a steady mass of infantry. Besides their splendid victories over the dukes of Austria and their own neighbouring nobility, they had repulsed, in the year 1375, one of those predatory bodies of troops, the scourge of Europe in that age, and to whose licentiousness kingdoms and free states yielded alike a passive submission. They gave the danphin, afterward Louis XI., who entered their country, in 1444, with a similar body of ruffians, called Armagnacs, the disbanded mercenaries of the English war, sufficient reason to desist from his invasion and to respect their valour. That able prince formed indeed so high a notion of the Swiss, that he sedulously cultivated their alliance during the rest of his life. He was made abundantly sensible of the wisdom of this policy, when he saw his greatest enemy, the Duke of Burgundy routed at Granson and Morat, and his affairs irrecoverably ruined by these hardy republicans. The ensuing age is the most conspicuous, though not the most essentially glorious, in the history of Swisserland. Courted for the excellence of their troops by the rival sovereigns of Europe, and themselves too sensible both to ambitious schemes of dominion and to the thirst of money, the united cantons came to play a very prominent part in the wars of Lombardy, with great military renown, but not without some impeachment of that sterling probity which had distinguished their earlier efforts for independence. These events, however, do not fall within my limits; but the last year of the fifteenth century is a leading epoch with which I shall close this sketch. Though the house of Austria had ceased to menace the liberties of Helvetia, and had even been for many years its ally, the Emperor Maximilian, aware of the important service he might derive from the cantons in his projects upon Italy, as well as of the disadvantage he sustained by their partiality to French interest, endeavoured to revive the unextinguished supremacy of the empire. That supremacy had just been restored in Germany by the establishment of the Imperial Chamber, and of a regular pecuniary contribution for its support as well as for other purposes, in the diet of Worms. The Helvetic cantons were summoned to yield obedience to these imperial laws; an innovation, for such the revival of obsolete prerogatives must be considered, exceedingly hostile to their republican independence, and involving consequences not less material in their eyes, the abandonment of a line of policy which tended to enrich, if not to aggrandize them. Their refusal to comply brought on a war, wherein the Tyrolese subjects of Maximilian, and the Swabian league, a confederacy of cities in that province lately formed under the emperor's auspices, were principally engaged against the Swiss. But the success of the latter was decisive; and, after a terrible devastation of the frontiers of Germany, peace was concluded upon terms very honourable for Swisserland. The cantons were declared free from the jurisdiction of the Imperial Chamber, and from all contributions imposed by the diet. Their right to enter into foreign alliance, even hostile to the empire, if it

Ratification of their independence in 1500

cles of Swisserland have enabled Muller to embellish his narration with so much circumstantial detail, he has been remarkably fortunate in his authorities. No man could write the annals of England or France in the fourteenth century with such particularity, if he was scrupulous not to fill up the meager sketch of chroniclers from the stories of his invention. The striking scenery of Swisserland, and Muller's exact acquaintance with it, have given him another advantage as a *painter* of history.

* V. c. 2. † Vol. i., c. 10.

was not expressly recognised, continued unimpaired in practice; nor am I aware that they were at any time afterward supposed to incur the crime of rebellion by such proceedings. Though, perhaps, in the strictest letter of public law, the Swiss cantons were not absolutely released from their subjection to the empire until the treaty of Westphalia, their real sovereignty must be dated by an historian from the year when every prerogative which a government can exercise was finally abandoned.*

* Planta, vol. ii., c. 1.

CHAPTER VI.

HISTORY OF THE GREEKS AND SARACENS.

Rise of Mahometanism.—Causes of its Success.—Progress of Saracen Arms.—Greek Empire.—Decline of the Khalifs.—The Greeks recover part of their Losses.—The Turks.—The Crusades.—Capture of Constantinople by the Latins.—Its Recovery by the Greeks.—The Moguls.—The Ottomans.—Danger at Constantinople.—Timur.—Capture of Constantinople by Mahomet II.—Alarm of Europe.

THE difficulty which occurs to us in endeavouring to fix a natural commencement of modern history, even in the Western countries of Europe, is much enhanced when we direct our attention to the Eastern Empire. In tracing the long series of the Byzantine annals, we never lose sight of antiquity; the Greek language, the Roman name, the titles, the laws, all the shadowy circumstance of ancient greatness, attend us throughout the progress from the first to the last of the Constantines; and it is only when we observe the external condition and relations of their empire, that we perceive ourselves to be embarked in a new sea, and are compelled to deduce, from points of bearing to the history of other nations, a line of separation, which the domestic revolutions of Constantinople would not satisfactorily afford. The appearance of Mahomet, and the conquests of his disciples, present an epoch in the history of Asia still more important and more definite than the subversion of the Roman empire in Europe; and hence the boundary line between the ancient and modern divisions of Byzantine history will intersect the reign of Heraclius. That prince may be said to have stood on the verge of both hemispheres of time, whose youth was crowned with the last victories over the successors of Artaxerxes, and whose age was clouded by the first calamities of Mahometan invasion.

Of all the revolutions which have had a permanent influence upon the civil history of mankind, none could so little be anticipated by human prudence as that effected by the religion of Arabia. As the seeds of invisible disease grow up sometimes in silence to maturity, till they manifest themselves hopeless and irresistible, the gradual propagation of a new faith in a barbarous country beyond the limits of the empire was hardly known perhaps, and certainly disregarded, in the court of Constantinople. Arabia, in the age of Mahomet, was divided into many small states, most of which, however, seem to have looked up to Mecca as the capital of their nation and the chief seat of their religious worship. The capture of that city accordingly, and subjugation of its powerful and numerous aristocracy, readily drew after it the submission of the minor tribes, who transferred to the conqueror the reverence they were used to show to those he had subdued. If we consider Mahomet only as a military usurper, there is nothing more explicable, or more analogous, especially to the course of Oriental history, than his success. But as the author of a religious imposture, upon which, though avowedly unattested by miraculous powers, and though originally discountenanced by the civil magistrates, he had the boldness to found a scheme of universal dominion which his followers were half enabled to realize, it is a curious speculation, by what means he could inspire so sincere, so ardent, so energetic, and so permanent a belief.

Appearance of Mahomet.

A full explanation of the causes which contributed to the progress of Mahometanism is not perhaps at present attainable by those most conversant with this department of literature. But we may point out several of

Causes of his success.

leading importance:* in the first place, those just and elevated notions of the divine nature, and of moral duties, the gold ore that pervades the dross of the Koran, which were calculated to strike a serious and reflecting people, already perhaps disinclined, by intermixture with their Jewish and Christian fellow-citizens, to the superstitions of their ancient idolatry;† next, the artful incorporation of tenets, usages, and traditions from the various religions that existed in Arabia;‡ and thirdly, the extensive application of the precepts in the Koran, a book confessedly written with more elegance and purity, to all legal transactions, and all the business of life. It may be expected that I should add to these, what is commonly considered as a distinguishing mark of Mahometanism, its indulgence to voluptuousness. But this appears to be greatly exaggerated. Although the character of its founder may have been tainted by sensuality as well as ferociousness, I do not think that he relied upon inducements of the former kind for the diffusion of his system. We are not to judge of this by rules of Christian purity or of European practice. If polygamy was a prevailing usage in Arabia, as is not questioned, its permission gave no additional license to the proselytes of Mahomet, who will be found rather to have narrowed the unbounded liberty of Oriental manners in this respect; while his decided condemnation of adultery, and of incestuous connexions, so frequent among barbarous nations, does not argue a very lax and accommodating morality. A devout Mussulman exhibits much more of the Stoical than the Epicurean character. Nor can any one read the Koran without being sensible that it breathes an austere and scrupulous spirit. And, in fact, the founder of a new religion or sect is little likely to obtain permanent success by indulging the vices and luxuries of mankind. I should rather be disposed to reckon the severity of Mahomet's discipline among the causes of its influence. Precepts of ritual observance, being always definite and unequivocal, are less likely to be neglected, after their obligation has been acknowledged, than those of moral virtue. Thus the long fasting, the pilgrimages, the regular prayers and ablutions, the constant almsgiving, the abstinence from stimulating liquors, enjoined by the Koran, created a visible standard of practice among its followers, and preserved a continual recollection of their law.

But the prevalence of Islâm in the lifetime of its prophet, and during the first ages of its existence, was chiefly owing to the spirit of martial energy that he infused into it. The religion of Mahomet is as essentially a military system as the institution of chivalry in the west of Europe. The people of Arabia, a race of strong passions and sanguinary temper inured to habits of pillage and murder, found in the law of their native prophet, not a license, but a command to desolate the world, and a promise of all that their glowing imaginations could anticipate of Paradise annexed to all in which they most delighted upon earth. It is difficult for us, in the calmness of our closets, to conceive that feverish intensity of excitement to which man may be wrought when the animal and intellectual ener

* We are very destitute of satisfactory materials for the history of Mahomet himself. Abulfeda, the most judicious of his biographers, lived in the fourteenth century, when it must have been morally impossible to discriminate the truth amid the torrent of fabulous tradition. Al Jannabi, whom Gagnier translated, is a mere legend writer; it would be as rational to quote the Acta Sanctorum as his romance. It is therefore difficult to ascertain the real character of the prophet, except as it is deducible from the Koran; and some skeptical Orientalists, if I am not mistaken, have called in question the absolute genuineness even of that. Gibbon has hardly apprized the reader sufficiently of the crumbling foundation upon which his narrative of Mahomet's life and actions depends.

† The very curious romance of Antar, written perhaps before the appearance of Mahomet, seems to render it probable, that however idolatry, as we are told by Sale, might prevail in some parts of Arabia, yet the genuine religion of the descendants of Ishmael was a belief in the unity of God as strict as is laid down in the Koran itself, and accompanied by the same antipathy, partly religious, partly national, towards the Fire-worshippers, which Mahomet inculcated. This corroborates what I had said in the text before the publication of that work.

‡ I am very much disposed to believe, notwithstanding what seems to be the general opinion, that Mahomet had never read any part of the New Testament. His knowledge of Christianity appears to be wholly derived from the apocryphal gospels, and similar works. He admitted the miraculous conception and prophetic character of Jesus, but not his divinity or pre-existence. Hence it is rather surprising to read, in a popular book of sermons by a living prelate, that all the heresies of the Christian church (I quote the substance from memory) are to be found in the Koran, but especially that of Arianism. No one who knows what Arianism is, and what Mahometanism is, could possibly fall into so strange an error. The misfortune has been, that the learned writer, while accumulating a mass of reading upon this part of his subject, neglected what should have been the *nucleus* of the whole, a perusal of the single book which contains the doctrine of the Arabian impostor. In this strange chimera about the Arianism of Mahomet, he has been led away by a misplaced trust in Whitaker; a writer almost invariably in the wrong, and whose bad reasoning upon all the points of historical criticism which he attempted to discuss is quite notorious.

gies of his nature converge to a point, and the buoyancy of strength and courage reciprocates the influence of moral sentiment or religious hope. The effect of this union I have formerly remarked in the crusades; a phenomenon perfectly analogous to the early history of the Saracens. In each, one hardly knows whether most to admire the prodigious exertions of heroism, or to revolt from the ferocious bigotry that attended them. But the crusades were a temporary effort, not thoroughly congenial to the spirit of Christendom, which, even in the darkest and most superstitious ages, was not susceptible of the solitary and overruling fanaticism of the Moslems. They needed no excitements from pontiffs and preachers to achieve the work to which they were called; the precept was in their law, the principle was in their hearts, the assurance of success was in their swords. O prophet, exclaimed Ali, when Mahomet, in the first years of his mission, sought among the scanty and hesitating assembly of his friends a vizier and lieutenant in command, I am the man; whoever rises against thee, I will dash out his teeth, tear out his eyes, break his legs, rip up his belly. O prophet, I will be thy vizier over them.* These words of Mahomet's early and illustrious disciple are, as it were, a text, upon which the commentary expands into the whole Saracenic history. They contain the vital essence of his religion, implicit faith, and ferocious energy. Death, slavery, tribute to unbelievers, were the glad tidings of the Arabian prophet. To the idolaters indeed, or those who acknowledged no special revelation, one alternative only was proposed, conversion or the sword. The People of the Book, as they are termed in the Koran, or four sects of Christians, Jews, Magians, and Sabians, were permitted to redeem their adherence to their ancient law, by the payment of tribute, and other marks of humiliation and servitude. But the limits which Mahometan intolerance had prescribed to itself were seldom transgressed, the word pledged to unbelievers was seldom forfeited; and, with all their insolence and oppression, the Moslem conquerors were mild and liberal in comparison with those who obeyed the pontiffs of Rome or Constantinople.

First conquests of the Saracens.

At the death of Mahomet in 632, his temporal and religious sovereignty embraced, and was limited by, the Arabian peninsula. The Roman and Persian empires, engaged in tedious and indecisive hostility upon the rivers of Mesopotamia and the Armenian mountains, were viewed by the ambitious fanatics of his creed as their quarry. In the very first year of Mahomet's immediate successor, Abubeker, each of these mighty empires was invaded. The latter opposed but a short resistance. The crumbling fabric of eastern despotism is never secure against rapid and total subversion; a few victories, a few sieges, carried the Arabian arms from the Tigris to the Oxus, and overthrew with the Sassanian dynasty, the ancient and famous religion they had professed. Seven years of active and unceasing warfare sufficed to subjugate the rich province of Syria, though defended by numerous armies and fortified cities [A. D. 632–639]; and the Khalif Omar had scarcely returned thanks for the accomplishment of this conquest, when Amrou his lieutenant announced to him the entire reduction of Egypt. After some interval, the Saracens won their way along the coast of Africa as far as the pillars of Hercules [A. D. 647–698], and a third province was irretrievably torn from the Greek empire. These western conquests introduced them to fresh enemies, and ushered in more splendid successes; encouraged by the disunion of the Visigoths, and invited by treachery, Musa, the general of a master who sat beyond the opposite extremity of the Mediterranean Sea [A. D. 710], passed over into Spain, and within about two years the name of Mahomet was invoked under the Pyrenees.*

State of the Greek empire.

These conquests, which astonish the careless and superficial, are less perplexing to a calm inquirer than their cessation; the loss of half the Roman empire, than the preservation of the rest. A glance from Medina to Constantinople, in the middle of the seventh century, would probably have induced an indifferent spectator, if such a being may be imagined, to anticipate by eight hundred years the establishment of

* Gibbon, vol ix., p. 284

* Ockley's History of the Saracens Cardonne Révolutions de l'Afrique et de l'Espagne. The former of these works is well known, and justly admired for its simplicity and picturesque details. Scarcely any narrative has ever excelled in beauty that of the death of Hossein. But these do not tend to render it more deserving of confidence. On the contrary, it may be laid down as a pretty general rule, that *circumstantiality*, which enhances the credibility of a witness, diminishes that of an historian remote in time or situation. And I observe that Reiske, in his preface to Abulfeda, speaks of Wakidi, from whom Ockley's book is but a translation, as a mere fabulist.

a Mahometan dominion upon the shores of the Hellespont. The fame of Heraclius had withered in the Syrian war; and his successors appeared as incapable to resist as they were unworthy to govern. Their despotism, unchecked by law, was often punished by successful rebellion; but not a whisper of civil liberty was ever heard, and the vicissitudes of servitude and anarchy consummated the moral degeneracy of the nation. Less ignorant than the western barbarians, the Greeks abused their ingenuity in theological controversies, those especially which related to the nature and incarnation of our Saviour; wherein the disputants, as is usual, became more positive and rancorous as their creed receded from the possibility of human apprehension. Nor were these confined to the clergy, who had not, in the East, obtained the prerogative of guiding the national faith; the sovereigns sided alternately with opposing factions; Heraclius was not too brave, nor Theodora too infamous, for discussions of theology; and the dissenters from an imperial decision were involved in the double proscription of reason and heresy. But the persecutors of their opponents at home pretended to cowardly scrupulousness in the field; nor was the Greek church ashamed to require the lustration of a canonical penance from the soldier who shed the blood of his enemies in a national war.

Decline of the Saracens.

But this depraved people were preserved from destruction by the vices of their enemies, still more than by some intrinsic resources which they yet possessed. A rapid degeneracy enfeebled the victorious Moslems in their career. That irresistible enthusiasm, that earnest and disinterested zeal of the companions of Mahomet was in a great measure lost, even before the first generation had passed away. In the fruitful valleys of Damascus and Bassora, the Arabs of the desert forgot their abstemious habits. Rich from the tribute of an enslaved people, the Mahometan sovereigns knew no employment of riches but in sensual luxury, and paid the price of voluptuous indulgence in the relaxation of their strength and energy. Under the reign of Moawiyah, the fifth khalif, an hereditary succession was substituted for the free choice of the faithful, by which the first representatives of the prophet had been elevated to power; and this regulation, necessary as it plainly was to avert in some degree the dangers of schism and civil war, exposed the kingdom to the certainty of being often governed by feeble tyrants. But no regulation could be more than a temporary preservative against civil war. The dissensions which still separate and render hostile the followers of Mahomet may be traced to the first events that ensued upon his death, to the rejection of his son-in-law Ali by the electors of Medina. Two reigns, those of Abubeker and Omar, passed in external glory and domestic reverence; but the old age of Othman was weak and imprudent, and the conspirators against him established the first among a hundred precedents of rebellion and regicide. Ali was now chosen; but a strong faction disputed his right; and the Saracen empire was for many years distracted with civil war, among competitors who appealed, in reality, to no other decision than that of the sword. The family of Ommiyah succeeded at last in establishing an unresisted, if not an undoubted title. But rebellions were perpetually afterward breaking out in that vast extent of dominion, till one of these revolters acquired by success a better name than rebel, and founded the dynasty of the Abbassides.

Khalifs of Bagdad.

[A. D. 750.] Damascus had been the seat of empire under the Ommiades; it was removed by the succeeding family to their new city of Bagdad. There are not any names in the long line of khalifs, after the companions of Mahomet, more renowned in history than some of the earlier sovereigns who reigned in this capital, Almansor, Haroun Alraschid, and Almamûn. Their splendid palaces, their numerous guards, their treasures of gold and silver, the populousness and wealth of their cities, formed a striking contrast to the rudeness and poverty of the western nations in the same age. In their court, learning, which the first Moslem had despised as unwarlike, or rejected as profane, was held in honour.* The Khalif Almamûn, especially, was distinguished for his patronage of letters; the philosophical writings of Greece were eagerly sought and translated; the stars were numbered, the course of the planets was measured; the Arabians improved upon the science they borrowed, and returned it with abundant interest to Europe in the communication of numeral figures and the intellectual language of algebra.† Yet the merit of the

* The Arabian writers date the origin of their literature (except those works of fiction which had always been popular) from the reign of Almansor A. D. 758.—Abulpharagius, p. 160. Gibbon, c. 52

† Several very recent publications contain interesting details on Saracen literature. Berington

Abbassides has been exaggerated by adulation or gratitude. After all the vague praises of hireling poets, which have sometimes been repeated in Europe, it is very rare to read the history of an eastern sovereign unstained by atrocious crimes. No Christian government, except perhaps that of Constantinople, exhibits such a series of tyrants as the khalifs of Bagdad, if deeds of blood wrought through unbridled passion, or jealous policy, may challenge the name of tyranny. These are ill redeemed by ceremonious devotion, and acts of trifling, perhaps ostentatious humility; or even by the best attribute of Mahometan princes, a rigorous justice in chastising the offences of others. Anecdotes of this description give as imperfect a sketch of an oriental sovereign as monkish chroniclers sometimes draw of one in Europe, who founded monasteries and obeyed the clergy; though it must be owned that the former are in much better taste.

Though the Abbassides have acquired more celebrity, they never attained the real strength of their predecessors. Under the last of the house of Ommiyah, one command was obeyed almost along the whole diameter of the known world, from the banks of the Sihon to the utmost promontory of Portugal. But the revolution which changed the succession of khalifs produced another not less important. A fugitive of the vanquished family, by name Abdalrahman, arrived in Spain; and the Moslems of that country, not sharing in the prejudices which had stirred up the Persians in favour of the line of Abbas, and conscious that their remote situation entitled them to independence, proclaimed him Khalif of Cordova. There could be little hope of reducing so distant a dependance; and the example was not unlikely to be imitated. In the reign of Haroun Alraschid, two principalities were formed in Africa; of the Aglabites, who reigned over Tunis and Tripoli; and of the Edrisites, in the western parts of Barbary. These yielded in about a century to the Fatimites, a more powerful dynasty, who afterward established an empire in Egypt.*

Separation of Spain and Africa.

The loss, however, of Spain and Africa was the inevitable effect of that immensely extended dominion, Decline of the Khalifs which their separation alone would not have enfeebled. But other revolutions awaited it at home. In the history of the Abbassides of Bagdad we read over again the decline of European monarchies, through their various symptoms of ruin; and find alternate analogies to the insults of the barbarians towards imperial Rome in the fifth century, to the personal insignificance of the Merovingian kings, and to the feudal usurpations that dismembered the inheritance of Charlemagne. 1. Beyond the northeastern frontier of the Saracen empire dwelt a warlike and powerful nation of the Tartar family, who defended the independence of Turkestan from the Sea of Aral to the great central chain of mountains. In the wars which the khalifs or their lieutenants waged against them, many of these Turks were led into captivity, and dispersed over the empire. Their strength and courage distinguished them among a people grown effeminate by luxury; and that jealousy of disaffection among his subjects, so natural to an eastern monarch, might be an additional motive with the Khalif Motassem to form bodies of guards out of these prisoners. But his policy was fatally erroneous. More rude, and even more ferocious than the Arabs, they contemned the feebleness of the khalifate, while they grasped at its riches. The son of Motassem, Motawakkel, was murdered in his palace by the barbarians of the north; and his fate revealed the secret of the empire, that the choice of its sovereign had passed to their slaves. Degradation and death were frequently the lot of succeeding khalifs; but, in the East, the son leaps boldly on the throne which the blood of his father has stained, and the prætorian guards of Bagdad rarely failed to render a fallacious obedience to the nearest heir of the house of Abbas 2. In about one hundred years after the introduction of the Turkish soldiers, the sovereigns of Bagdad sunk almost into oblivion. Al Radi, who died in 940, was the last of these that officiated in the mosque, that commanded the forces in person, that addressed the people from the pulpit, that enjoyed the pomp and splendour of royalty.† But he was the

Literary History of the Middle Ages, Mill's History of Mahometanism, chap. vi., Turner's History of England, vol. i. Harris's Philological Arrangements is perhaps a book better known; and though it has since been much excelled, was one of the first contributions, in our own language, to this department, in which a great deal yet remains for the oriental scholars of Europe. Casiri's admirable catalogue of Arabic MSS. in the Escurial ought before this to have been followed up by a more accurate examination of their contents than it was possible for him to give. But sound literature and the Escurial!—what jarring ideas!

* For these revolutions, which it is not very easy to fix in the memory, consult Cardonne, who has made as much of them as the subject would bear

† Abulfeda, p. 261. Gibbon, c. 52 Modern

first who appointed, instead of a vizier, a new officer, a mayor, as it were, of the palace, with the title of Emir al Omra, commander of commanders, to whom he delegated by compulsion the functions of his office. This title was usually seized by active and martial spirits; it was sometimes hereditary, and in effect irrevocable by the khalifs, whose names hardly appear after this time in oriental annals. 3. During these revolutions of the palace, every province successively shook off its allegiance; new principalities were formed in Syria and Mesopotamia, as well as in Khorasan and Persia, till the dominion of the Commander of the Faithful was literally confined to the city of Bagdad and its adjacent territory. For a time, some of these princes, who had been appointed as governors by the khalifs, professed to respect his supremacy, by naming him in the public prayers and upon the coin; but these tokens of dependance were gradually obliterated.*

Revival of the Greek Empire.

Such is the outline of Saracenic history for three centuries after Mahomet; one age of glorious conquest; a second of stationary, but rather precarious greatness; a third of rapid decline. The Greek empire meanwhile survived, and almost recovered from the shock it had sustained. Besides the decline of its enemies, several circumstances may be enumerated, tending to its preservation. The maritime province of Cilicia had been overrun by the Mahometans; but between this and the lesser Asia, Mount Taurus raises its massy buckler, spreading, as a natural bulwark, from the seacoast of the ancient Pamphylia to the hilly district of Isauria, whence it extends in an easterly direction, separating the Cappadocian and Cilician plains, and, after throwing off considerable ridges to the north and south, connects itself with other chains of mountains that penetrate far into the Asiatic continent. Beyond this barrier the Saracens formed no durable settlement, though the armies of Alraschid wasted the country as far as the Hellespont, and the city of Amorium in Phrygia was razed to the ground by Al Motassem. The position of Constantinople, chosen with a sagacity to which the course of events almost gave the appearance of prescience, secured her from any immediate danger on the side of Asia and rendered her as little accessible to an enemy as any city which valour and patriotism did not protect. Yet, in the days of Arabian energy, she was twice attacked by great naval armaments [A. D. 668]; the first siege, or rather blockade, continued for seven years [A. D. 716]; the second, though shorter, was more terrible, and her walls, as well as her port, were actually invested by the combined forces of the Khalif Waled, under his brother Moslema.* The final discomfiture of these assailants showed the resisting force of the empire, or rather of its capital; but perhaps the abandonment of such maritime enterprises by the Saracens may be in some measure ascribed to the removal of their metropolis from Damascus to Bagdad. But the Greeks in their turn determined to dispute the command of the sea. By possessing the secret of an inextinguishable fire, they fought on superior terms: their wealth, perhaps their skill, enabled them to employ larger and better appointed vessels; and they ultimately expelled their enemies from the islands of Crete and Cyprus. By land they were less desirous of encountering the Moslems. The science of tactics is studied by the pusillanimous, like that of medicine by the sick; and the Byzantine emperors, Leo and Constantine, have left written treatises on the art of avoiding defeat, of protracting contest, of resisting attack.† But this timid policy, and even the purchase of armistices from the Saracens, were not ill calculated for the state of both nations; while Constantinople temporized, Bagdad shook to her foundations; and the heirs of the Roman name might boast the immortality of their own empire, when they contemplated the dissolution of that which had so rapidly sprung up and perished. Amid all the crimes and revolutions of the Byzantine government, and its history is but a series of crimes and revolutions, it was never dismembered by intestine war; a sedition in the army, a tumult in the theatre, a conspiracy in the palace, precipitated a monarch from the throne; but the allegiance of Constantinople was instantly transferred to his successor, and the provinces implicitly obeyed the voice of the capital. The custom too of partition, so

Univ. Hist., vol. ii. Al Radi's command of the army is only mentioned by the last.

* The decline of the Saracens is fully discussed in the 52d chapter of Gibbon, which is, in itself, a complete philosophical dissertation upon this part of history

* Gibbon, c. 52.

† Idem, c. 53. Constantine Porphyrogenitus, in his advice to his son as to the administration of the empire, betrays a mind not ashamed to confess weakness and cowardice, and pleasing itself in petty arts to elude the rapacity, or divide the power of its enemies

baneful to the Latin kingdoms, and which was not altogether unknown to the Saracens, never prevailed in the Greek empire. It stood in the middle of the tenth century, as vicious indeed and cowardly, but more wealthy, more enlightened, and far more secure from its enemies, than under the first successors of Heraclius. For about one hundred years preceding there had been only partial wars with the Mahometan potentates; and in these the emperors seem gradually to have gained the advantage, and to have become more frequently the aggressors. [A. D. 963–975.] But the increasing distractions of the East encouraged two brave usurpers, Nicephorus Phocas and John Zimisces, to attempt the actual recovery of the lost provinces. They carried the Roman arms (one may use the term with less reluctance than usual) over Syria; Antioch and Aleppo were taken by storm, Damascus submitted; even the cities of Mesopotamia, beyond the ancient boundary of the Euphrates, were added to the trophies of Zimisces, who unwillingly spared the capital of the khalifate. From such distant conquests it was expedient, and indeed necessary, to withdraw; but Cilicia and Antioch were permanently restored to the empire. At the close of the tenth century, the emperors of Constantinople possessed the best and greatest portion of the modern kingdom of Naples, a part of Sicily, the whole European dominions of the Ottomans, the province of Anatolia or Asia Minor, with some part of Syria and Armenia.*

The Turks.

These successes of the Greek empire were certainly much rather due to the weakness of its enemies, than to any revival of national courage and vigour; yet they would probably have been more durable, if the contest had been only with the khalifate, or the kingdoms derived from it. But a new actor was to appear on the stage of Asiatic tragedy. The same Turkish nation, the slaves and captives from which had become arbiters of the sceptre of Bagdad, passed their original limits of the Iaxartes or Sihon. The sultans of Gazna, a dynasty whose splendid conquests were of very short duration, had deemed it politic to divide the strength of these formidable allies, by inviting a part of them into Khorasan. They covered that fertile province with their pastoral tents, and beckoned their compatriots to share the riches of the south. [A. D. 1038.] The Gaznevides fell the earliest victims; but Persia, violated in turn by every conqueror, was a tempting and unresisting prey. Togrol Bek, the founder of the Seljukian dynasty of Turks, overthrew the family of Bowides, who had long reigned at Ispahan, respected the pageant of Mahometan sovereignty in the Khalif of Bagdad, embraced with all his tribes the religion of the vanquished, and commenced the attack upon Christendom by an irruption into Armenia. [A. D. 1071.] His nephew and successor, Alp Arslan, defeated and took prisoner the Emperor Romanus Diogenes; and the conquest of Asia Minor was almost completed by princes of the same family, the Seljukians of Rûm,* who were permitted by Malek Shah, the third sultan of the Turks, to form an independent kingdom. Through their own exertions, and the selfish impolicy of rival competitors for the throne of Constantinople, who bartered the strength of the empire for assistance, the Turks became masters of the Asiatic cities and fortified passes; nor did there seem any obstacle to the invasion of Europe.†

Their conquests.

In this state of jeopardy, the Greek empire looked for aid to the nations of the west, and received it in fuller measure than was expected, or perhaps desired. The deliverance of Constantinople was indeed a very secondary object with the crusaders. But it was necessarily included in their scheme of operations, which, though they all tended to the recovery of Jerusalem, must commence with the first enemies that lay on their line of march. The Turks were entirely defeated, their capital of Nice restored to the empire. As the Franks passed onwards, the Emperor Alexius Comnenus trod on their footsteps, and secured to himself the fruits for which their enthusiasm disdained to wait. He regained possession of the strong places on the Ægean shores, of the defiles of Bithynia, and of the entire coast of Asia Minor, both on the Euxine and Mediterranean Seas, which the Turkish armies, composed of cavalry and unused to regular warfare, could not recover.‡ So much must undoubtedly be as-

The first Crusade.

* Gibbon, c. 52 and 53. The latter of these chapters contains as luminous a sketch of the condition of Greece, as the former does of Saracenic history. In each the facts are not grouped historically, according to the order of time, but philosophically, according to their relations.

* Rûm, i. e., country of the Romans.

† Gibbon, c. 57. De Guignes, Hist. des Huns, t. ii., l. 2.

‡ It does not seem perfectly clear whether the seacoast, north and south, was reannexed to the empire during the reign of Alexius, or of his ge-

cribed to the first crusade. But I think that the general effect of these expeditions has been overrated by those who consider them as having permanently retarded the progress of the Turkish power. The Christians in Palestine and Syria were hardly in contact with the Seljukian kingdom of Rûm, the only enemies of the empire; and it is not easy to perceive that their small and feeble principalities, engaged commonly in defending themselves against the Mahometan princes of Mesopotamia, or the Fatimite khalifs of Egypt, could obstruct the arms of a sovereign of Iconium upon the Mæander or the Halys. Other causes are adequate to explain the equipoise in which the balance of dominion in Anatolia was kept during the twelfth century; the valour and activity of the two Comneni, John and Manuel, especially the former; and the frequent partitions and internal feuds, through which the Seljukians of Iconium, like all other oriental governments, became incapable of foreign aggression.

Progress of the Turkish power. The Greeks.

But whatever obligation might be due to the first crusaders from the eastern empire was cancelled by their descendants one hundred years afterward, when the fourth in number of those expeditions was turned to the subjugation of Constantinople itself. One of those domestic revolutions which occur perpetually in Byzantine history, had placed a usurper on the imperial throne. The lawful monarch was condemned to blindness and a prison; but the heir escaped to recount his misfortunes to the fleet and army of crusaders, assembled in the Dalmatian port of Zara. [A. D. 1202.] This armament had been collected for the usual purposes, and through the usual motives, temporal and spiritual, of a crusade; the military force chiefly consisted of French nobles; the naval was supplied by the republic of Venice, whose doge commanded personally in the expedition. It was not apparently consistent with the primary object of retrieving the Christian affairs in Palestine, to interfere in the government of a Christian empire; but the temptation of punishing a faithless people, and the hope of assistance in their subsequent operations, prevailed. They turned their prows up the Archipelago; and notwithstanding the vast population and defensible strength of Constantinople, compelled the usurper to fly, and the citizens to surrender. But animosities springing from religious schism and national jealousy were not likely to be allayed by such remedies; the Greeks, wounded in their pride and bigotry, regarded the legitimate emperor as a creature of their enemies, ready to sacrifice their church, a stipulated condition of his restoration, to that of Rome. In a few months a new sedition and conspiracy raised another usurper, in defiance of the crusaders' army encamped without the walls. [A. D. 1204.] The siege instantly recommenced; and after three months the city of Constantinople was taken by storm. The tale of pillage and murder is always uniform; but the calamities of ancient capitals, like those of the great, impress us more forcibly. Even now we sympathize with the virgin majesty of Constantinople, decked with the accumulated wealth of ages, and resplendent with the monuments of Roman empire and of Grecian art. Her populousness is estimated beyond credibility: ten, twenty, thirty-fold that of London or Paris; certainly far beyond the united capitals of all European kingdoms in that age.* In magnificence she excelled them more than in numbers; instead of the thatched roofs, the mud walls, the narrow streets the pitiful buildings of those cities, she had marble and gilded palaces, churches and monasteries, the works of skilful architects, through nine centuries, gradually sliding from the severity of ancient taste into the more various and brilliant combinations of eastern fancy.† In the libraries of Constantinople were collected the remains of Grecian learning; her forum and hippodrome were decorated with those of Grecian sculpture; but neither would be spared by undistinguishing rapine; nor were the chiefs of the crusaders more able to appreciate the loss than their soldiery. Four horses, that

Capture of Constantinople by the Latins

cant son John Comnenus. But the doubt is hardly worth noticing.

* Ville Hardouin reckons the inhabitants of Constantinople at quatre cens mil hommes ou plus, by which Gibbon understands him to mean men of a military age. Le Beau allows a million for the whole population.—Gibbon, vol. xi., p. 213. We should probably rate London, in 1204. too high at 40,000 souls. Paris had been enlarged by Philip Augustus, and stood on more ground than London. —Delamare sur la Police, t. i., p. 76.

† O quanta civitas, exclaims Fulk of Chartres a hundred years before, nobilis et decora! quot monasteria quotque palatia sunt in eâ, opere mero fabrefacta! quot etiam in plateis vel in vicis opera ad spectandum mirabilia! Tædium est quidem magnum recitare, quanta sit ibi opulentia bonorum omnium, auri et argenti, palliorum multiformium, sacrarumque reliquiarum. Omni etiam tempore navigio frequenti cuncta hominum necessaria illuc afferuntur.—Du Chesne, Scrip Rerum Gallicarum, t. iv p. 822

breathe in the brass of Lysippus, were removed from Constantinople to the square of St. Mark at Venice; destined again to become the trophies of war, and to follow the alternate revolutions of conquest. But we learn from a contemporary Greek to deplore the fate of many other pieces of sculpture, which were destroyed in wantonness, or even coined into brass money.*

Partition of the empire.

The lawful emperor and his son had perished in the rebellion that gave occasion to this catastrophe; and there remained no right to interfere with that of conquest. But the Latins were a promiscuous multitude, and what their independent valour had earned was not to be transferred to a single master. Though the name of emperor seemed necessary for the government of Constantinople, the unity of despotic power was very foreign to the principles and the interests of the crusaders. In their selfish schemes of aggrandizement they tore in pieces the Greek empire. One fourth only was allotted to the emperor, three eighths were the share of the republic of Venice, and the remainder was divided among the chiefs. Baldwin, count of Flanders, obtained the imperial title, with the feudal sovereignty over the minor principalities. A monarchy thus dismembered had little prospect of honour or durability. The Latin emperors of Constantinople were more contemptible and unfortunate, not so much from personal character as political weakness, than their predecessors; their vassals rebelled against sovereigns not more powerful than themselves; the Bulgarians, a nation who, after being long formidable, had been subdued by the imperial arms, and only recovered independence on the eve of the Latin conquest, insulted their capital; the Greeks viewed them with silent hatred, and hailed the dawning deliverance from the Asiatic coast. On that side of the Bosphorus, the Latin usurpation was scarcely for a moment acknowledged; Nice became the seat of a Greek dynasty, who reigned with honour as far as the Mæander; and crossing into Europe, after having established their dominion throughout Romania and other provinces [A. D. 1261], expelled the last Latin emperors from Constantinople in less than sixty years from its capture.

The Greeks recover Constantinople.

During the reign of these Greeks at Nice, they had fortunately little to dread on the side of their former enemies, and were generally on terms of friendship with the Seljukians of Iconium. That monarchy indeed had sufficient objects of apprehension for itself. Their own example in changing the upland plains of Tartary for the cultivated valleys of the south was imitated in the thirteenth century by two successive hordes of northern barbarians. The Karismians, whose tents had been pitched on the lower Oxus and Caspian Sea, availed themselves of the decline of the Turkish power to establish their dominion in Persia, and menaced, though they did not overthrow, the kingdom of Iconium. A more tremendous storm ensued in the irruption of Moguls under the sons of Zingis Khan. From the farthest regions of Chinese Tartary issued a race more fierce and destitute of civilization than those who had preceded, whose numbers were told by hundreds of thousands, and whose only test of victory was devastation. [A. D. 1218–1272.] All Asia, from the Sea of China to the Euxine, wasted beneath the locusts of the north. They annihilated the phantom of authority which still lingered with the name of khalif at Bagdad. They reduced into dependance, and finally subverted, the Seljukian dynasty of Persia, Syria, and Iconium. The Turks of the latter kingdom betook themselves to the mountainous country, where they formed several petty principalities, which subsisted by incursions into the territory of the Moguls or Greeks. The chief of one of these, named Othman, at the end of the thirteenth century [A. D. 1299], penetrated into the province of Bithynia, from which his posterity were never to withdraw.*

Invasions of Asia by the Karismians

And Moguls

The empire of Constantinople had never recovered the blow it received at the hands of the Latins. Most of the islands in the Archipelago, and the provinces of proper Greece from Thessaly southward, were still possessed by those invaders. The wealth and naval power of the empire had passed into the hands of the maritime republics; Venice Genoa, Pisa, and Barcelona were enriched by a commerce which they carried on as independent states within the precincts of Constantinople, scarcely deigning to solicit the permission or recognise the supremacy of its master. [A. D. 1352.] In a great battle fought under the walls of

Declining state of the Greek empire.

* Gibbon, c. 60.

* De Guignes, Hist. des Huns, t. iii, l. 15. Gibbon, c. 64.

the city between the Venetian and Genoese fleets, the weight of the Roman empire, in Gibbon's expression, was scarcely felt in the balance of these opulent and powerful republics. Eight galleys were the contribution of the Emperor Cantacuzene to his Venetian allies; and upon their defeat he submitted to the ignominy of excluding them for ever from trading in his dominions. Meantime the remains of the empire in Asia were seized by the independent Turkish dynasties, of which the most illustrious, that of the Ottomans, occupied the province of Bithynia. [A. D. 1341.] Invited by a Byzantine faction into Europe, about the middle of the fourteenth century, they fixed themselves in the neighbourhood of the capital, and in the thirty years' reign of Amurath I., subdued, with little resistance, the province of Romania, and the small Christian kingdoms that had been formed on the lower Danube. Bajazet, the successor of Amurath, reduced the independent emirs of Anatolia to subjection, and, after long threatening Constantinople, invested it by sea and land. [A. D. 1396.] The Greeks called loudly upon their brethren of the west for aid against the common enemy of Christendom; but the flower of French chivalry had been slain or taken in the battle of Nicopolis in Bulgaria,* where the King of Hungary, notwithstanding the heroism of these volunteers, was entirely defeated by Bajazet. The Emperor Manuel left his capital with a faint hope of exciting the courts of Europe to some decided efforts, by personal representations of the danger; and, during his absence, Constantinople was saved, not by a friend, indeed, but by a power more formidable to her enemies than to herself.

The Ottomans.

The loose masses of mankind, that without laws, agriculture, or fixed dwellings, overspread the vast central regions of Asia, have at various times been impelled, by necessity of subsistence, or through the casual appearance of a commanding genius, upon the domain of culture and civilization. Two principal roads connect the nations of Tartary with those of the west and south; the one into Europe, along the Sea of Azoph, and northern coast of the Euxine; the other across the interval between the Bukharian mountains and the Caspian into Persia. Four times at least within the period of authentic history, the Scythian tribes have taken the former course, and poured themselves into Europe, but each wave was less effectual than the preceding. The first of these was in the fourth and fifth centuries, for we may range those rapidly successive migrations of the Goths and Huns together, when the Roman empire fell to the ground, and the only boundary of barbarian conquest was the Atlantic Ocean upon the shores of Portugal. The second wave came on with the Hungarians in the tenth century, whose ravages extended as far as the southern provinces of France. A third attack was sustained from the Moguls under the children of Zingis, at the same period as that which overwhelmed Persia. The Russian monarchy was destroyed in this invasion, and for two hundred years that great country lay prostrate under the yoke of the Tartars. As they advanced, Poland and Hungary gave little opposition; and the farthest nations of Europe were appalled by the tempest. But Germany was no longer as she had been in the anarchy of the tenth century; the Moguls were unused to resistance, and still less inclined to regular warfare; they retired before the Emperor Frederick II. [A. D. 1245], and the utmost points of their western invasion were the cities of Lignitz, in Silesia, and Neustadt, in Austria. In the fourth and last aggression of the Tartars, their progress in Europe is hardly perceptible; the Moguls of Timur's army could only boast the destruction of Azoph, and the pillage of some Russian provinces. Timur, the sovereign of these Moguls, and founder of their second dynasty, which has been more permanent and celebrated than that of Zingis, had been the prince of a small tribe in Transoxiana, between the Gihon and Sirr, the doubtful frontier of settled and pastoral nations. His own energy and the weakness of his neighbours are sufficient to explain the revolution he effected. Like former conquerors, Togrol Bek and Zingis, he chose the road through Persia; and, meeting little resistance from the disordered governments of Asia, extended his empire on one side

The Tartars or Moguls of Timur.

* The Hungarians fled in this battle, and deserted their allies, according to the Mémoires de Boucicaut, c. 25. But Froissart, who seems a fairer authority, imputes the defeat to the rashness of the French.—Part iv., ch. 79. The Count de Nevers (Jean Sans Peur, afterward Duke of Burgundy), who commanded the French, was made prisoner with others of the royal blood, and ransomed at a very high price. Many of eminent birth and merit were put to death; a fate from which Boucicaut was saved by the interference of the Count de Nevers, who might better himself have perished with honour on that occasion, than survived to plunge his country into civil war and his name into infamy.

to the Syrian coast, while by successes still more renowned, though not belonging to this place, it reached on the other to the heart of Hindostan. In his old age, the restlessness of ambition impelled him against the Turks of Anatolia. Bajazet hastened from the siege of Constantinople to a more perilous contest: his defeat and captivity, in the plains of Angora [A. D. 1402], clouded for a time the Ottoman crescent, and preserved the wreck of the Greek empire for fifty years longer.

Defeat of Bajazet

The Moguls did not improve their victory; in the western parts of Asia, as in Hindostan, Timur was but a barbarian destroyer, though at Samarcand a sovereign and a legislator. He gave up Anatolia to the sons of Bajazet; but the unity of their power was broken; and the Ottoman kingdom, like those which had preceded, experienced the evils of partition and mutual animosity. For about twenty years an opportunity was given to the Greeks of recovering part of their losses; but they were incapable of making the best use of this advantage, and though they regained possession of part of Romania, did not extirpate a strong Turkish colony that held the city of Gallipoli in the Chersonesus. [A. D. 1421.] When Amurath II., therefore, reunited under his vigorous sceptre the Ottoman monarchy, Constantinople was exposed to another siege and to fresh losses. Her walls, however, repelled the enemy; and, during the reign of Amurath, she had leisure to repeat those signals of distress which the princes of Christendom refused to observe. The situation of Europe was indeed sufficiently inauspicious: France, the original country of the crusades and of chivalry, was involved in foreign and domestic war; while a schism, apparently interminable, rent the bosom of the Latin church, and impaired the efficiency of the only power that could unite and animate its disciples in a religious war. Even when the Roman pontiffs were best disposed to rescue Constantinople from destruction, it was rather as masters than as allies that they would interfere; their ungenerous bigotry, or rather pride, dictated the submission of her church, and the renunciation of her favourite article of distinctive faith. The Greeks yielded with reluctance and insincerity in the council of Florence; but soon rescinded their treaty of union. Eugenius IV. procured a short diversion on the side of Hungary; but after the unfortunate battle of Warna, the Hungarians were abundantly employed in self-defence. [A. D. 1444.]

Danger of Constantinople.

The two monarchies which have successively held their seat in the city of Constantine, may be contrasted in the circumstances of their decline. In the present day we anticipate, with an assurance that none can deem extravagant, the approaching subversion of the Ottoman power; but the signs of internal weakness have not yet been confirmed by the dismemberment of provinces; and the arch of dominion, that long since has seemed nodding to its fall, and totters at every blast of the north, still rests upon the landmarks of ancient conquest, and spans the ample regions from Bagdad to Belgrade. Far different were the events that preceded the dissolution of the Greek empire. Every province was in turn subdued; every city opened her gates to the conqueror; the limbs were lopped off one by one; but the pulse still beat at the heart, and the majesty of the Roman name was ultimately confined to the walls of Constantinople. Before Mahomet II. planted his cannon against them, he had completed every smaller conquest, and deprived the expiring empire of every hope of succour or delay. It was necessary that Constantinople should fall; but the magnanimous resignation of her emperor bestows an honour upon her fall which her prosperity seldom earned. The long deferred but inevitable moment arrived [A. D. 1453], and the last of the Cesars (I will not say of the Palæologi) folded round him the imperial mantle, and remembered the name which he represented in the dignity of heroic death. It is thus that the intellectual principle, when enfeebled by disease or age, is said to rally its energies in the presence of death, and to pour the radiance of unclouded reason around the last struggles of dissolution.

Its fall

Though the fate of Constantinople had been protracted beyond all reasonable expectation, the actual intelligence operated like that of sudden calamity. A sentiment of consternation, perhaps of self-reproach, thrilled to the heart of Christendom. There seemed no longer any thing to divert the Ottoman armies from Hungary; and, if Hungary should be subdued, it was evident that both Italy and the German empire were exposed to invasion.*

Alarm excited by it in Europe.

* Sive vincitur Hungaria, sive coacta jungitur Turcis, neque Italia neque Germania tuta erit, neque satis Rhenus Gallos securos reddet.—Æn Sylv., p. 678. This is part of a discourse pronounced by Æneas Sylvius before the diet of Frankfort

A general union of Christian powers was required to withstand this common enemy. But the popes, who had so often armed them against each other, wasted their spiritual and political counsels in attempting to restore unanimity. War was proclaimed against the Turks at the diet of Frankfort, in 1454; but no efforts were made to carry the menace into execution. No prince could have sat on the imperial throne more unfitted for the emergency than Frederick III.; his mean spirit and narrow capacity exposed him to the contempt of mankind; his avarice and duplicity ensured the hatred of Austria and Hungary. During the papacy of Pius II., whose heart was thoroughly engaged in this legitimate crusade, a more specious attempt was made by convening a European congress at Mantua. Almost all the sovereigns attended by their envoys; it was concluded that 50,000 men-at-arms should be raised, and a tax levied for three years of one tenth from the revenues of the clergy, one thirtieth from those of the laity, and one twentieth from the capital of the Jews.* Pius engaged to head this armament in person; but when he appeared next year at Ancona, the appointed place of embarcation, the princes had failed in all their promises of men and money; and he found only a headlong crowd of adventurers, destitute of every necessary, and expecting to be fed and paid at the pope's expense. It was not by such a body that Mahomet could be expelled from Constantinople. If the Christian sovereigns had given a steady and sincere co-operation, the contest would still have been arduous and uncertain. In the early crusades, the superiority of arms, of skill, and even of discipline, had been uniformly on the side of Europe. But the present circumstances were far from similar. An institution, begun by the first and perfected by the second Amurath, had given to the Turkish armies, what their enemies still wanted, military subordination and veteran experience. Aware, as it seems, of the real superiority of Europeans in war, these sultans selected the stoutest youths from their Bulgarian, Servian, or Albanian captives, who were educated in habits of martial discipline, and formed into a regular force with the name of Janizaries. After conquest had put an end to personal captivity, a tax of every fifth male child was raised upon the Christian population for the same purpose. The arm of Europe was thus turned upon herself; and the western nations must have contended with troops of hereditary robustness and intrepidity, whose emulous enthusiasm for the country that had adopted them was controlled by habitual obedience to their commanders.*

Institution of Janizaries.

Yet, forty years after the fall of Constantinople, at the epoch of Charles VIII.'s expedition into Italy, the just apprehensions of European statesmen might have gradually subsided. Except the Morea, Negropont, and a few other unimportant conquests, no real progress had been made by the Ottomans. Mahomet II. had been kept at bay by the Hungarians; he had been repulsed with some ignominy by the knights of St. John from the Island of Rhodes. A petty chieftain de-

Suspension of the Ottoman conquests.

which, though too declamatory, like most of his writings, is an interesting illustration of the state of Europe, and of the impression produced by that calamity. Spondanus, ad an. 1454, has given large extracts from this oration.

* Spondanus. Neither Charles VII., nor even Philip of Burgundy, who had made the loudest professions, and pledged himself in a fantastic pageant at his court, soon after the capture of Constantinople, to undertake this crusade, was sincere in his promises. The former pretended apprehensions of invasion from England, as an excuse for sending no troops; which, considering the situation of England in 1459, was a bold attempt upon the credulity of mankind

* In the long declamation of Æneas Sylvius before the diet of Frankfort, in 1454, he has the following contrast between the European and Turkish militia: a good specimen of the artifice with which an ingenious orator can disguise the truth, while he seems to be stating it most precisely. Conferamus nunc Turcos et vos invicem; et quid speran dum sit, si cum illis pugnetis, examinemus. Vos nati ad arma, illi tracti. Vos armati, illi inermes; vos gladios versatis, illi cultris utuntur; vos balistæ tenditis, illi arcus trahunt; vos loricæ thoracesque protegunt, illos culcitra tegit; vos equos regitis, illi ab equis reguntur; vos nobiles in bellum ducitis, illi servos aut artifices cogunt, &c. &c., p. 685. This, however, had little effect upon the hearers, who were better judges of military affairs than the secretary of Frederick III. Pius II., or Æneas Sylvius, was a lively writer and a skilful intriguer. Long experience had given him a considerable insight into European politics; and his views are usually clear and sensible. Though not so learned as some popes, he knew much better what was going forward in his own time. But the vanity of displaying his eloquence betrayed him into a strange folly, when he addressed a very long letter to Mahomet II., explaining the Catholic faith and urging him to be baptized; in which case, so far from preaching a crusade against the Turks, he would gladly make use of their power to recover the rights of the church. Some of his inducements are curious, and must, if made public, have been highly gratifying to his friend Frederick III. Quippe ut arbitramur, si Christianus fuisses, mortuo Ladislao Ungariæ et Bohemiæ rege, nemo præter te sua regna fuisset adeptus. Sperassent Ungari post diuturna bellorum mala sub tuo regimine pacem, et illos Bohemi secuti fuissent; sed cum esses nostræ religionis hostis, elegerunt Ungari &c.—Epist. 396

fied this mighty conqueror for twenty years in the mountains of Epirus; and the persevering courage of his desultory warfare with such trifling resources, and so little prospect of ultimate success, may justify the exaggerated admiration with which his contemporaries honoured the names of Scanderbeg. Once only the crescent was displayed on the Calabrian coast [A. D. 1480]; but the city of Otranto remained but a year in the possession of Mahomet. On his death a disputed succession involved his children in civil war. Bajazet, the eldest, obtained the victory; but his rival brother Zizim fled to Rhodes, from whence he was removed to France, and afterward to Rome. Apprehensions of this exiled prince seem to have dictated a pacific policy to the reigning sultan, whose character did not possess the usual energy of Ottoman sovereigns.

CHAPTER VII.

HISTORY OF ECCLESIASTICAL POWER DURING THE MIDDLE AGES.

Wealth of the Clergy—its Sources.—Encroachments on Ecclesiastical Property—their Jurisdiction—arbitrative—coercive—their Political Power.—Supremacy of the Crown.—Charlemagne.—Change after his Death, and Encroachments of the Church in the ninth Century.—Primacy of the See of Rome—its early Stage.—Gregory I.—Council of Frankfort—false Decretals.—Progress of Papal Authority.—Effects of Excommunication.—Lothaire.—State of the Church in the tenth Century.—Marriage of Priests.—Simony.—Episcopal Elections.—Imperial Authority over the Popes.—Disputes concerning Investitures.—Gregory VII. and Henry IV.—Concordat of Calixtus.—Election by Chapters—general System of Gregory VII.—Progress of Papal usurpations in the twelfth Century.—Innocent III.—his Character and Schemes—continual Progress of the Papacy.—Canon Law.—Mendicant Orders—dispensing Power.—Taxation of the Clergy by the Popes.—Encroachments on Rights of Patronage.—Mandats, Reserves, &c.—General Disaffection towards the See of Rome in the thirteenth century.—Progress of Ecclesiastical Jurisdiction.—Immunity of the Clergy in Criminal Cases.—Restraints imposed upon their Jurisdiction—upon their Acquisition of Property.—Boniface VIII.—his Quarrel with Philip the Fair—its Termination.—Gradual Decline of Papal Authority.—Louis of Bavaria.—Secession to Avignon and Return to Rome.—Conduct of Avignon Popes—contested Election of Urban and Clement produces the great Schism.—Council of Pisa—Constance—Basle.—Methods adopted to restrain the Papal usurpations in England, Germany, and France.—Liberties of the Gallican Church.—Decline of the Papal Influence in Italy.

Wealth of the church under the emperors.

At the irruption of the northern invaders into the Roman empire, they found the clergy already endowed with extensive possessions. Besides the spontaneous oblations upon which the ministers of the Christian church had originally subsisted, they had obtained, even under the pagan emperors, by concealment or connivance, for the Roman law did not permit a tenure of lands in mortmain, certain immoveable estates, the revenues of which were applicable to their own maintenance and that of the poor.* These indeed, were precarious, and liable to confiscation in times of persecution. But it was among the first effects of the conversion of Constantine, to give not only a security, but a legal sanction, to the territorial acquisitions of the church. The edict of Milan, in 313, recognises the actual estates of ecclesiastical corporations.† Another, published in 321, grants to all the subjects of the empire the power of bequeathing their property to the church.‡ His own liberality and that of his successors set an example which did not want imitators. Passing rapidly from a condition of distress and persecution to the summit of prosperity, the church degenerated as rapidly from her ancient purity, and forfeited the respect of future ages in the same proportion as she acquired the blind veneration of her own. Covetousness, especially, became almost a characteristic vice. Valentinian I., in 370, prohibited the clergy from receiving the bequest of women; a modification more discreditable than any general law could have been. And several of the fathers severely reprobate the prevailing avidity of their contemporaries.§

Increased after its subversion

The devotion of the conquering nations, as it was still less enlightened than that of the subjects of the empire, so was it still more

* Giannone, Istoria di Napoli, l. ii., c. 8. Gibbon, c. 15 and c. 20. F. Paul's Treatise on Benefices, c. 4. The last writer does not wholly confirm this position; but a comparison of the three seems to justify my text.

† Giannone. Gibbon, ubi supra. F. Paul, c. 5

‡ Idem, Ibid

§ Giannone ubi supra. F. Paul. c. 6

munificent. They left, indeed, the worship of Hesus and Taranis in their forests; but they retained the elementary principles of that, and of all barbarous idolatry, a superstitious reverence for the priesthood, a credulity that seemed to invite imposture, and a confidence in the efficacy of gifts to expiate offences. Of this temper it is undeniable that the ministers of religion, influenced probably not so much by personal covetousness as by zeal for the interests of their order, took advantage. Many of the peculiar and prominent characteristics in the faith and discipline of those ages appear to have been either introduced, or sedulously promoted, for the purposes of sordid fraud. To those purposes conspired the veneration for relics, the worship of images, the idolatry of saints and martyrs, the religious inviolability of sanctuaries, the consecration of cemeteries, but, above all, the doctrine of purgatory, and masses for the relief of the dead. A creed thus contrived, operating upon the minds of barbarians, lavish though rapacious, and devout though dissolute, naturally caused a torrent of opulence to pour in upon the church. Donations of land were continually made to the bishops, and, in still more ample proportion, to the monastic foundations. These had not been very numerous in the west till the beginning of the sixth century, when Benedict established his celebrated rule.* A more remarkable show of piety, a more absolute seclusion from the world, forms more impressive and edifying, prayers and masses more constantly repeated, gave to the professed in these institutions a preference over the secular clergy.

The ecclesiastical hierarchy never received any territorial endowment by law, either under the Roman empire or the kingdoms erected upon its ruins. But the voluntary munificence of princes, as well as their subjects, amply supplied the place of a more universal provision. Large private estates, or, as they were termed, patrimonies, not only within their own dioceses, but sometimes in distant countries, sustained the dignity of the principal sees, and especially that of Rome.† The French monarchs of the first dynasty, the Carlovingian family and their great chief, the Saxon line of emperors, the kings of England and Leon, set hardly any bounds to their liberality, as numerous charters still extant in diplomatic collections attest. Many churches possessed seven or eight thousand mansi, one with but two thousand passed for only indifferently rich.* But it must be remarked, that many of these donations are of lands uncultivated and unappropriated.† The monasteries acquired legitimate riches by the culture of these deserted tracts, and by the prudent management of their revenues, which were less exposed to the ordinary means of dissipation than those of the laity. Their wealth, continually accumulated, enabled them to become the regular purchasers of landed estates, especially in the time of the crusades, when the fiefs of the nobility were constantly in the market for sale or mortgage.‡

Sometimes improperly acquired

If the possessions of ecclesiastical communities had all been as fairly earned, we could find nothing in them to reprehend. But other sources of wealth were less pure; and they derived their wealth from many sources. Those who entered into a monastery threw frequently their whole estates into the common stock; and even the children of rich parents were expected to make a donation of land on assuming the cowl. Some gave their property to the church before entering on military expeditions; gifts were made by some to take effect after their lives, and bequests by many in the terrors of dissolution. Even those legacies to charitable purposes, which the clergy could with more decency and speciousness recommend, and of which the administration was generally confined to them, were frequently applied to their own benefit.§ They failed not, above all, to inculcate upon the wealthy sinner, that no atonement could be so acceptable to Heaven as liberal presents to its earthly delegates.‖ To die without allotting a por

* Giannone, l. iii., c. 6; l. iv., c. 12. Treatise on Benefices, c. 8. Fleury, Huitième Discours sur l'Hist. Ecclésiastique. Muratori, Dissert. 65.

† St. Marc, t. i., p. 281. Giannone, l. iv., c. 12

* Schmidt, t. ii., p. 205.

† Muratori, Dissert. 65. Du Cange, v. Eremus

‡ Heeren, Essai sur les Croisades, p. 166 Schmidt, t. iii., p. 293.

§ Primò sacris pastoribus data est facultas, ut hæreditatis portio in pauperes et egenos dispergeretur; sed sensim ecclesiæ quoque in pauperum censum venerunt, atque intestate gentis mens credita est proclivior in eas futura fuisse: quâ ex re pinguius illarum patrimonium evasit. Immò episcopi ipsi in rem suam ejusmodi consuetudine a interdum convertebant: ac tributum evasit, quæ antea pii moris fuit.—Muratori, Antiquitates I liæ, t. v., Dissert. 67.

‖ Muratori, Dissert. 67 (Antiquit. Italiæ, t. v., p. 1055), has preserved a curious charter of an Italian count, who declares, that, struck with reflections upon his sinful state, he had taken counsel with certain religious how he should atone for l offences. Accepto consilio ab iis excepto si

tion of worldly wealth to pious uses, was accounted almost like suicide, or a refusal of the last sacraments; and hence intestacy passed for a sort of fraud upon the church, which she punished by taking the administration of the deceased's effects into her own hands. This, however, was peculiar to England, and seems to have been the case there only between the reigns of Henry III. and Edward III., when the bishop took a portion of the intestate's personal estate, for the advantage of the church and poor, instead of distributing it among his next of kin.* The canonical penances imposed upon repentant offenders, extravagantly severe in themselves, were commuted for money or for immoveable possessions; a fertile, though scandalous source of monastic wealth, which the popes afterward diverted into their own coffers by the usage of dispensations and indulgences.† The church lands enjoyed an immunity from taxes, though not in general from military service, when of a feudal tenure. But their tenure was frequently in what was called frankalmoign, without any obligation of service. Hence it became a customary fraud of lay proprietors to grant estates to the church, which they received again by way of fief or lease, exempted from public burdens. And as if all these means of accumulating what they could not legitimately enjoy were insufficient, the monks prostituted their knowledge of writing to the purpose of forging charters in their own favour, which might easily impose upon an ignorant age, since it has required a peculiar science to detect them in modern times. Such rapacity might seem incredible in men cut off from the pursuits of life and the hope of posterity, if we did not behold every day the unreasonableness of avarice, and the fervour of professional attachment.‡

As an additional source of revenue, and in imitation of the Jewish law, the payment of tithes was recommended or enjoined. These, however, were not applicable at first to the maintenance of a resident clergy. Parochial divisions, as they now exist, did not take place, at least in some countries, till several centuries after the establishment of Christianity.* The rural churches, erected successively as the necessities of a congregation required, or the piety of a landlord suggested, were in fact a sort of chapels dependant on the cathedral, and served by itinerant ministers at the bishop's discretion. The bishop himself received the tithes, and apportioned them as he thought fit. A capitulary of Charlemagne, however, regulates their division into three parts; one for the bishop and his clergy, a second for the poor, and a third for the support of the fabric of the church.† Some of the rural churches obtained by episcopal concessions the privileges of baptism and burial, which were accompanied with a fixed share of tithes, and seem to imply the residence of a minister. The same privileges were gradually extended to the rest; and thus a complete parochial division was finally established. But this was hardly the case in England till near the time of the conquest.‡ Tithes

The slow and gradual manner in which parochial churches became independent, appears to be of itself a sufficient answer to those who ascribe a great antiquity to the universal payment of tithes. There are, however, more direct proofs that this species of ecclesiastical property was acquired not only by degrees, but with considerable opposition. We find the payment of tithes first enjoined by the canons of a provincial council in France near the end of the sixth century. From the ninth to the end of the twelfth, or even later, it is continually enforced by similar authority.§ Father Paul remarks, that most of the sermons preached about the eighth century inculcate this as a duty, and even seem to place the summit of Christian perfection in its perform-

nunciare sæculo possem, nullum esse melius inter eleemosinarum virtutes, quàm si de propriis meis substantiis in monasterium concederem. Hoc consilium ab iis libenter, et ardentissimo animo ego accepi.

* Selden, vol. iii., p. 1676. Prynne's Constitutions, vol. iii., p. 18. Blackstone, vol. ii., chap. 32. In France, the lord of the fief seems to have taken the whole spoil.—Du Cange, v. Intestatus.

† Muratori, Dissert. 68.

‡ Muratori's 65th, 67th, and 68th Dissertations on the antiquities of Italy, have furnished the principal materials of my text, with Father Paul's treatise on Benefices, especially chaps. 19 and 29; Giannone, loc. cit. and l. iv., c. 12; l. v., c. 6; l. x., c. 12. Schmidt, Hist. des Allemands, t. i., p. 370; t. ii., p. 203, 462; t. iv., p. 202. Fleury, III., Discours sur l'Hist. Ecclés. Du Cange, voc. Precaria.

* Muratori, Dissert. 74, and Fleury, Institutions au Droit Ecclésiastique, t. i., p. 162. refer the origin of parishes to the fourth century; but this must be limited to the most populous parts of the empire.

† Schmidt, t. ii., p. 206. This seems to have been founded on an ancient canon.—F. Paul., c. 7.

‡ Collier's Ecclesiastical History, p. 229.

§ Selden's History of Tithes, vol. iii., p. 1108 edit. Wilkins. Tithes are said by Giannone to have been enforced by some papal decrees in the sixth century, l. iii., c. 6.

ance.* This reluctant submission of the people to a general and permanent tribute is perfectly consistent with the eagerness displayed by them in accumulating voluntary donations upon the church. Charlemagne was the first who gave the confirmation of a civil statute to these ecclesiastical injunctions; no one at least has, so far as I know, adduced any earlier law for the payment of tithes than one of his capitularies.† But it would be precipitate to infer, either that the practice had not already gained ground to a considerable extent, through the influence of ecclesiastical authority, or, on the other hand, that it became universal in consequence of the commands of Charlemagne.‡ In the subsequent ages, it was very common to appropriate tithes, which had originally been payable to the bishop, either towards the support of particular churches, or, according to the prevalent superstition, to monastic foundations.§ These arbitrary consecrations, though the subject of complaint, lasted, by a sort of prescriptive right of the landholder, till about the year 1200. It was nearly at the same time that the obligation of paying tithes, which had been originally confined to those called predial, or the fruits of the earth, was extended, at least in theory, to every species of profit, and to the wages of every kind of labour.‖

Spoliation of church property.

Yet there were many hinderances that thwarted the clergy in their acquisition of opulence, and a sort of reflux, that set sometimes very strongly against them. In times of barbarous violence, nothing can thoroughly compensate for the inferiority of physical strength and prowess. The ecclesiastical history of the middle ages presents one long contention of fraud against robbery; of acquisitions made by the church through such means as I have described and torn from her by lawless power. Those very men who, in the hour of sickness and impending death, showered the gifts of expiatory devotion upon her altars, had passed the sunshine of their lives in sacrilegious plunder. Notwithstanding the frequent instances of extreme reverence for religious institutions among the nobility, we should be deceived in supposing this to be their general character. Rapacity, not less insatiable than that of the abbots, was commonly united with a daring fierceness that the abbots could not resist. In every country, we find continual lamentation over the plunder of ecclesiastical possessions. Charles Martel is reproached with having given the first notorious example of such spoliation. It was not, however, commonly practised by sovereigns. But the evil was not the less universally felt. The parochial tithes, especially, as the hand of robbery falls heaviest upon the weak, were exposed to unlawful seizure. In the tenth and eleventh centuries nothing was more common than to see the revenues of benefices in the hands of lay impropriators, who employed curates at the cheapest rate; an abuse that has never ceased in the church.* Several attempts were made to restore these tithes, but even Gregory VII. did not venture to proceed in it;† and indeed it is highly probable that they might be held in some instances by a lawful title.‡ Sometimes the property of monasteries was dilapidated by corrupt abbots, whose acts, however clandestine and unlawful, it was not easy to revoke. And both the bishops and convents were obliged to invest powerful lay protectors, under the name of advocates, with considerable fiefs, as the price of their assistance against depredators. But these advocates became too often themselves the spoilers, and oppressed the helpless ecclesiastics for whose defence they had been engaged.§

* Treatise on Benefices, c. 11.

† Mably (Observations sur l'Hist. de France, t. i., p. 238 et 438) has, with remarkable rashness, attacked the current opinion, that Charlemagne established the legal obligation of tithes, and denied that any of his capitularies bear such an interpretation. Those which he quotes have indeed a different meaning; but he has overlooked an express enactment in 789 (Baluzii Capitularia, t. i., p. 253), which admits of no question; and I believe that there are others in confirmation.

‡ The grant of Ethelwolf in 855 seems to be the most probable origin of the right to tithes in England. Whether this law, for such it was, met with constant regard, is another question. It is said by Marina, that tithes were not legally established in Castile till the reign of Alfonso X.—Ensayo sobre las siete partidas, c. 359.

§ Selden, p. 1114, et seq. Coke, 2 Inst., p. 641.

‖ Selden's History of Tithes. Treatise on Benefices, c. 24. Giannone, l. x. c. 12.

* Du Cange, voc. Abbas.

† Schmidt, t. iv., p. 204. At an assembly held at St. Denis in 997, the bishops proposed to restore the tithes to the secular clergy: but such a tumult was excited by this attempt, that the meeting was broken up.—Recueil des Historiens, t. xi., præfat, p. 212.

‡ Selden's Hist. of Tithes, p. 1136. The third council of Lateran restrains laymen from transferring their impropriated tithes to other laymen.—Velly, Hist. de France, t. iii., p. 235. This seems tacitly to admit that their possession was lawful, at least by prescription.

§ For the injuries sustained by ecclesiastical proprietors, see Muratori, Dissert. 72. Du Cange, v. Advocatus. Schmidt, t. ii., p. 220, 470, t. iii., p. 290; t. iv., p. 188, 202. Recueil des Historiens,

If it had not been for these drawbacks, the clergy must, one would imagine, have almost acquired the exclusive property of the soil. They did enjoy nearly one half of England, and, I believe, a greater proportion in some countries of Europe.* They had reached, perhaps, their zenith in respect of territorial property about the conclusion of the twelfth century.† After that time, the disposition to enrich the clergy by pious donations grew more languid, and was put under certain legal restraints, to which I shall hereafter advert; but they became rather more secure from forcible usurpations.

Ecclesiastical jurisdiction.

The acquisitions of wealth by the church were hardly so remarkable, and scarcely contributed so much to her greatness, as those innovations upon the ordinary course of justice, which fall under the head of ecclesiastical jurisdiction and immunity. It is hardly, perhaps, necessary to caution the reader, that rights of territorial justice, possessed by ecclesiastics in virtue of their fiefs, are by no means included in this description. Episcopal jurisdiction, properly so called, may be considered as depending upon the choice of litigant parties, upon their condition, and upon the subject matter of their differences.

Arbitrative.

1. The arbitrative authority of ecclesiastical pastors, if not coeval with Christianity, grew up very early in the church, and was natural, or even necessary, to an insulated and persecuted society.‡ Accustomed to feel a strong aversion to the imperial tribunals, and even to consider a recurrence to them as hardly consistent with their profession, the early Christians retained somewhat of a similar prejudice even after the establishment of their religion. The arbitration of their bishops still seemed a less objectionable mode of settling differences. And the arbitrative jurisdiction was powerfully supported by a law of Constantine, which directed the civil magistrate to enforce the execution of episcopal awards. Another edict, ascribed to the same emperor, and annexed to the Theodosian code, extended the jurisdiction of the bishops to all causes which either party chose to refer to it, even where they had already commenced in a secular court, and declared the bishop's sentence not subject to appeal. This edict has clearly been proved to be a forgery. It is evident, by a novel of Valentinian III., about 450, that the church had still no jurisdiction in questions of a temporal nature, except by means of the joint reference of contending parties. Some expressions, indeed, used by the emperor, seem intended to repress the spirit of encroachment upon the civil magistrates, which had probably begun to manifest itself. Charlemagne, however, deceived by the spurious constitution in the Theodosian code, repeats all its absurd and enormous provisions in one of his capitularies.* But it appears so inconceivable, that an enlightened sovereign should deliberately place in the hierarchy this absolute control over his own magistrates, that one might be justified in suspecting some kind of fraud to have been practised upon him, or, at least, that he was not thoroughly aware of the extent of his concession. Certain it is, that we do not find the church, in her most arrogant temper, asserting the full privileges contained in this capitulary.†

Coercive over the clergy in civil.

2. If it was considered almost as a general obligation upon the primitive Christians to decide their civil disputes by internal arbitration, much more would this be incumbent upon the clergy. The canons of several councils, in the fourth and fifth centuries, sentence a bishop or priest to deposition who should bring any suit civil or even criminal, before a secular magistrate. This must, it should appear, be confined to causes where the defendant was a clerk, since the ecclesiastical court had hitherto no coercive jurisdiction over the laity. It was not so easy to induce laymen, in their suits against clerks, to prefer the episcopal tribunal. The emperors were not at all disposed to favour this species of encroachment till

xi., præfat., p. 184. Martenne, Thesaurus Anecdotorum, t. i., p. 595. Vaissette, Hist. de Languedoc, t. ii., p. 109, and appendix, passim.

* Turner's Hist. of England, vol. ii., p 413, from Avesbury. According to a calculation founded on a passage in Knyghton, the revenue of the English church in 1337 amounted to 730,000 marks per annum.—Macpherson's Annals of Commerce, vol. ., p. 519. Histoire du Droit public Ecclés. François, t. i., p. 214.

† The great age of monasteries in England was in the reigns of Henry I., Stephen, and Henry II. —Lyttleton's Henry II., vol. ii., p. 329. David I. of Scotland, contemporary with Henry II., was also a noted founder of monasteries.—Dalrymple's Annals.

‡ 1 Corinth., c. iv. The word ἐξουθενημένους, rendered in our version "of no reputation," has been interpreted by some to mean, persons destitute of coercive authority, referees. The passage at least tends to discourage suits before a secular judge.

* Baluzii Capitularia, t. i., p. 985.

† Gibbon, c. xx. Giannone, l. ii., c. 8; l. iii. c. 6 l. vi., c. 7. Schmidt, t. ii., p. 208. Fleury, 7me Discours, and Institutions au Droit Ecclésiastique t. ii., p. 1. Mémoires de l'Académie des Inscriptions, t. xxxvii. p. 566.

the reign of Justinian, who ordered civil suits against ecclesiastics to be carried only before the bishops. Yet this was accompanied by a provision, that a party dissatisfied with the sentence might apply to the secular magistrate, not as an appellant, but a co-ordinate jurisdiction; for, if different judgments were given in the two courts, the process was ultimately referred to the emperor.* But the early Merovingian kings adopted the exclusive jurisdiction of the bishop over causes wherein clerks were interested, without any of the checks which Justinian had provided. Many laws enacted during their reigns, and under Charlemagne, strictly prohibit the temporal magistrates from entertaining complaints against the children of the church.

And criminal suits.

This jurisdiction over the civil causes of clerks was not immediately attended with an equally exclusive cognizance of criminal offences imputed to them, wherein the state is so deeply interested, and the church could inflict so inadequate a punishment. Justinian appears to have reserved such offences for trial before the imperial magistrate, though with a material provision that the sentence against a clerk should not be executed without the consent of the bishop, or the final decision of the emperor. The bishop is not expressly invested with this controlling power by the laws of the Merovingians; but they enact that he must be present at the trial of one of his clerks; which probably was intended to declare the necessity of his concurrence in the judgment. The episcopal order was indeed absolutely exempted from secular jurisdiction by Justinian; a privilege which it had vainly endeavoured to establish under the earlier emperors. France permitted the same immunity; Chilperic, one of the most arbitrary of her kings, did not venture to charge some of his bishops with treason, except before a council of their brethren. Finally, Charlemagne seems to have extended to the whole body of the clergy an absolute exemption from the judicial authority of the magistrate.†

3. The character of a cause, as well as of the parties engaged, might bring it within the limits of ecclesiastical jurisdiction. In all questions simply religious, the church had an original right of decision; in those of a temporal nature, the civil magistrate had, by the imperial constitutions, as exclusive an authority.* Later ages witnessed strange innovations in this respect, when the spiritual courts usurped, under sophistical pretences, almost the whole administration of justice. But these encroachments were not, I apprehend, very striking till the twelfth century; and as about the same time measures, more or less vigorous and successful, began to be adopted in order to restrain them, I shall defer this part of the subject for the present.

Over particular causes.

In this sketch of the riches and jurisdiction of the hierarchy, I may seem to have implied their political influence, which is naturally connected with the two former. They possessed, however, more direct means of acquiring temporal power. Even under the Roman emperors they had found their road into palaces; they were sometimes ministers, more often secret counsellors, always necessary, but formidable allies, whose support was to be conciliated, and interference to be respected. But they assumed a far more decided influence over the new kingdoms of the west. They were entitled, in the first place, by the nature of those free governments, to a privilege unknown under the imperial despotism, that of assisting in the deliberative assemblies of the nation. Councils of bishops, such as had been convoked by Constantine and his successors, were limited in their functions to decisions of faith, or canons of ecclesiastical discipline. But the northern nations did not so well preserve the distinction between secular and spiritual legislation. The laity seldom, perhaps, gave their suffrage to the canons of the church; but the church was not so scrupulous as to trespassing upon the province of the laity. Many provisions are found in the canons of national and

Political power of clergy.

* This was also established about the same time by Athalaric, king of the Ostrogoths, and of course affected the popes, who were his subjects. —St. Marc, t. i., p. 60. Fleury, Hist. Ecclés., t. vii., p. 232.

† Mémoires de l'Académie, ubi supra. Giannone, l. iii., c. 6. Schmidt, t. ii., p. 236. Fleury, ubi supra.

Some of these writers do not state the law of Charlemagne so strongly. Nevertheless the words of a capitulary in 789, Ut clerici ecclesiastici ordinis si culpam incurrerint, aput ecclesiasticos judicentur, non apud sæculares, are sufficiently general (Baluz. Capitul., t. i., p. 227): and the same is expressed still more forcibly in the collection published by Ansegisus under Louis the Debonair. —(Idem, pp. 904 and 1115.) See other proofs in Fleury, Hist. Ecclés., t. ix., p. 607.

* Quoties de religione agitur, episcopos oportet judicare; alteras vero causas quæ ad ordinarios cognitores vel ad usum publici juris pertinent, legibus oportet audiri. Lex Arcadii et Honorii, apud Mém. de l'Académie, t. xxxix., p. 571

even provincial councils, which relate to the temporal constitution of the state. Thus one held at Calcluith (an unknown place in England), in 787, enacted that none but legitimate princes should be raised to the throne, and not such as were engendered in adultery or incest. But it is to be observed that, although this synod was strictly ecclesiastical, being summoned by the pope's legate, yet the kings of Mercia and Northumberland, with many of their nobles, confirmed the canons by their signature. As for the councils held under the Visigoth kings of Spain during the seventh century, it is not easy to determine whether they are to be considered as ecclesiastical or temporal assemblies * No kingdom was so thoroughly under the bondage of the hierarchy as Spain.† The first dynasty of France seem to have kept their national convention, called the Field of March, more distinct from merely ecclesiastical councils.

The bishops acquired and retained a great part of their ascendency by a very respectable instrument of power, intellectual superiority. As they alone were acquainted with the art of writing, they were naturally intrusted with political correspondence, and with the framing of the laws. As they alone knew the elements of a few sciences, the education of royal families devolved upon them as a necessary duty. In the fall of Rome, their influence upon the barbarians wore down the asperities of conquest, and saved the provincials half the shock of that tremendous revolution. As captive Greece is said to have subdued her Roman conquerors, so Rome, in her own turn of servitude, cast the fetters of a moral captivity upon the fierce invaders of the north. Chiefly through the exertions of the bishops, whose ambition may be forgiven for its effects, her religion, her language, in part even her laws, were transplanted into the courts of Paris and Toledo, which became a degree less barbarous by imitation.‡

Supremacy of the state.

Notwithstanding, however, the great authority and privileges of the church, it was decidedly subject to the supremacy of the crown, both during the continuance of the western empire, and after its subversion. The emperors convoked, regulated, and dissolved universal councils; the kings of France and Spain exercised the same right over the synods of their national churches.* The Ostrogoth kings of Italy fixed by their edicts the limits within which matrimony was prohibited on account of consanguinity, and granted dispensations from them.† Though the Roman emperors left episcopal elections to the clergy and people of the diocess, in which they were followed by the Ostrogoths and Lombards, yet they often interfered so far as to confirm a decision, or to determine a contest. The kings of France went farther and seem to have invariably either nominated the bishops, or, what was nearly tantamount, recommended their own candidate to the electors.

especially of Charlemagne.

But the sovereign who maintained with the greatest vigour his ecclesiastical supremacy was Charlemagne. Most of the capitularies of his reign relate to the discipline of the church; principally, indeed, taken from the ancient canons, but not the less receiving an additional sanction from his authority.‡ Some of his regulations, which appear to have been original, are such as men of high-church principles would, even in modern times, deem infringements of spiritual independence; that no legend of doubtful authority should be read in the churches, but only the canonical books, and that no saint should be honoured whom the whole church did not acknowledge. These were not passed in a synod of bishops, but enjoined by the sole authority of the emperor, who seems to have arrogated a legislative power over the church, which he did not possess in temporal affairs. Many of his other laws relating to the ecclesiastical constitution are enacted in a general council of the lay nobility as well as of prelates, and are so blended with those of a secular nature, that the two orders may appear to have equally consented to the whole. His father Pepin, indeed, left a remarkable precedent in a council held in 744, where the Nicene faith is declared to be established

* Marina, Teoria de las Cortes, t. i, p. 9.

† See instances of the temporal power of the Spanish bishops in Fleury, Hist Eccles., t. viii., p. 368, 397; t. ix., p. 68, &c.

‡ Schmidt, t. i., p. 365.

* Encyclopédie, art. Concile. Schmidt, t. i, p. 384. De Marca, De Concordantiâ Sacerdotii et Imperii, l. ii., c. 9, 11; et l. iv., passim.

The last of these sometimes endeavours to attenuate the royal supremacy, but his own work furnishes abundant evidence of it; especially l. vi. c. 19, &c. For the ecclesiastical independence of Spain, down to the eleventh century, see Marina, Ensayo sobre las siete partidas, c. 322, &c.; and De Marca, l. vi., c. 23.

† Giannone, l. iii., c. 6.

‡ Baluzii Capitularia, passim. Schmidt, t. i. p. 239 Gaillard, Vie de Charlemagne, t. iii

and even a particular heresy condemned, with the consent of the bishops and nobles. But whatever share we may imagine the laity in general to have had in such matters, Charlemagne himself did not consider even theological decisions as beyond his province; and, in more than one instance, manifested a determination not to surrender his own judgment, even in questions of that nature, to any ecclesiastical authority.

This part of Charlemagne's conduct is duly to be taken into the account, before we censure his vast extension of ecclesiastical privileges. Nothing was more remote from his character than the bigotry of those weak princes who have suffered the clergy to reign under their names. He acted upon a systematic plan of government, conceived by his own comprehensive genius, but requiring too continual an application of similar talents for durable execution. It was the error of a superior mind, zealous for religion and learning, to believe that men, dedicated to the functions of the one, and possessing what remained of the other, might, through strict rules of discipline, enforced by the constant vigilance of the sovereign, become fit instruments to reform and civilize a barbarous empire. It was the error of a magnanimous spirit to judge too favourably of human nature, and to presume that great trusts would be fulfilled, and great benefits remembered.

It is highly probable, indeed, that an ambitious hierarchy did not endure without reluctance this imperial supremacy of Charlemagne, though it was not expedient for them to resist a prince so formidable, and from whom they had so much to expect. But their dissatisfaction at a scheme of government incompatible with their own objects of perfect independence, produced a violent recoil under Louis the Debonair, who attempted to act the censor of ecclesiastical abuses with as much earnestness as his father, though with very inferior qualifications for so delicate an undertaking The bishops, accordingly, were among the chief instigators of those numerous revolts of his children which harassed this emperor. They set, upon one occasion, the first example of a usurpation which was to become very dangerous to society, the deposition of sovereigns by ecclesiastical authority. Louis, a prisoner in the hands of his enemies, had been intimidated enough to undergo a public penance; and the bishops pretended that, according to a canon of the church, he was incapable of returning afterward to a secular life, or preserving the character of sovereignty.* Circumstances enabled him to retain the empire, in defiance of this sentence. but the church had tasted the pleasure of trampling upon crowned heads, and was eager to repeat the experiment. Under the disjointed and feeble administration of his posterity in their several kingdoms, the bishops availed themselves of more than one opportunity to exalt their temporal power. Those weak Carlovingian princes, in their mutual animosities, encouraged the pretensions of a common enemy. Thus, Charles the Bald, and Louis of Bavaria, having driven their brother Lothaire from his dominions, held an assembly of some bishops, who adjudged him unworthy to reign, and after exacting a promise from the two allied brothers to govern better than he had done, permitted and commanded them to divide his territories.† After concurring in this unprecedented encroachment, Charles the Bald had little right to complain when, some years afterward, an assembly of bishops declared himself to have forfeited his crown, released his subjects from their allegiance, and transferred his kingdom to Louis of Bavaria. But, in truth, he did not pretend to deny the principle which he had contributed to maintain. Even in his own behalf, he did not appeal to the rights of sovereigns, and of the nation whom they represent. "No one," says this degenerate grandson of Charlemagne, "ought to have degraded me from the throne to which I was consecrated, until at least I

Pretensions of the hierarchy in the ninth century.

* Habitū sæculi se exuens habitum pœnitentiæ per impositionem manuum episcoporum suscepit ut post tantam talemque pœnitentiam nemo ulterius ad militiam sæcularem redeat. Acta exauctoratio nis Ludovici, apud Schmidt, t. ii., p. 68. There was a sort of precedent, though not, I think, very apposite, for this doctrine of implied abdication, in the case of Wamba, king of the Visigoths in Spain, who, having been clothed with a monastic dress, according to a common superstition, during a dangerous illness, was afterward adjudged by a council incapable of resuming his crown, to which he voluntarily submitted. The story, as told by an original writer, quoted in Baronius, ad A. D. 681, is too obscure to warrant any positive inference, though I think we may justly suspect a fraudulent contrivance between the bishops and Ervigius, the successor of Wamba. The latter, besides his monastic attire, had received the last sacrament; after which he might be deemed civilly dead.—Fleury, 3me Discours sur l'Hist. Ecclésiast., puts this case too strongly, when he tells us that the bishops *deposed* Wamba; it may have been a voluntary abdication, influenced by superstition, or, perhaps by disease.

† Schmidt t. ii., p. 77 Velly . ii., p. 61; see too p. 74.

had been heard and judged by the bishops, through whose ministry I was consecrated, who are called the thrones of God, in which God sitteth, and by whom he dispenses his judgments; to whose paternal chastisement I was willing to submit, and do still submit myself."*

These passages are very remarkable, and afford a decisive proof that the power obtained by national churches, through the superstitious prejudices then received, and a train of favourable circumstances, was as dangerous to civil government as the subsequent usurpations of the Roman pontiff, against which Protestant writers are apt too exclusively to direct their animadversions. Voltaire, I think, has remarked, that the ninth century was the age of the bishops, as the eleventh and twelfth were of the popes. It seemed as if Europe was about to pass under as absolute a domination of the hierarchy, as had been exercised by the priesthood of ancient Egypt, or the druids of Gaul. There is extant a remarkable instrument, recording the election of Boson, king of Arles, by which the bishops alone appear to have elevated him to the throne, without any concurrence of the nobility.† But it is inconceivable that such could have really been the case; and if the instrument is genuine, we must suppose it to have been framed in order to countenance future pretensions. For the clergy, by their exclusive knowledge of Latin, had it in their power to mould the language of public documents for their own purposes; a circumstance which should be cautiously kept in mind when we peruse instruments drawn up during the dark ages.

It was with an equal defiance of notorious truth, that the Bishop of Winchester, presiding as papal legate at an assembly of the clergy in 1141, during the civil war of Stephen and Matilda, asserted the right of electing a king of England to appertain principally to that order; and, by virtue of this unprecedented claim, raised Matilda to the throne.‡ England, indeed, has been obsequious, beyond most other countries, to the arrogance of her hierarchy; especially during the Anglo-Saxon period, when the nation was sunk in ignorance and effeminate superstition. Every one knows the story of King Edwy in some form or other, though I believe it impossible to ascertain the real circumstances of that controverted anecdote. But, upon the supposition least favourable to the king, the behaviour of Archbishop Odo and St. Dunstan was an intolerable outrage of spiritual tyranny.*

Rise of the papal power. Its commencement.

But, while the prelates of these nations, each within his respective sphere, were prosecuting their system of encroachment upon the laity, a new scheme was secretly forming within the bosom of the church, to inthral both that and the temporal governments of the world under an ecclesiastical monarch. Long before the earliest epoch that can be fixed for *modern* history, and, indeed, to speak fairly, almost as far back as ecclesiastical testimonies can carry us, the bishops of Rome had been venerated as first in rank among the rulers of the church. The nature of this primacy is doubtless a very controverted subject. It is, however, reduced by some moderate Catholics to little more than a precedency attached to the see of Rome in consequence of its foundation by the chief of the apostles as well as the dignity of the imperial

* Schmidt, t. ii., p. 217. Voltaire, Velly, Gaillard, &c.

† Recueil des Historiens, t. ix., p. 304.

‡ Ventilata est causa, sa s the Legate, coram majori parte cleri Angliæ, ac cujus jus potissimùm spectat principem eligere, simulque ordinare. Invocatâ itaque primò in auxilium divinitate, filiam pacifici regis, &c., in Anglia Normanniæque dominam eligimus, et ei fidem et manutenementum promittimus – Gu Malmsb. p. 188.

* Two living writers of the Roman Catholic communion, Dr. Milner, in his History of Winchester, and Mr. Lingard, in his Antiquities of the Anglo-Saxon church, contend that Elgiva, whom some Protestant historians are willing to represent as the queen of Edwy, was but his mistress: and seem inclined to justify the conduct of Odo and Dunstan towards this unfortunate couple. They are unquestionably so far right, that few, if any of those writers, who have been quoted as authorities in respect of this story, speak of the lady as a queen or lawful wife. I must, therefore, strongly reprobate the conduct of Dr. Henry, who, calling Elgiva queen, and asserting that she was married, refers, at the bottom of his page, to William of Malmsbury, and other chroniclers, who give a totally opposite account; especially as he does not intimate, by a single expression, that the nature of her connexion with the king was equivocal. Such a practice, when it proceeds, as I fear it did in this instance, not from oversight, but from prejudice, is a glaring violation of historical integrity, and tends to render the use of references, that great improvement of modern history, a sort of fraud upon the reader. But the fact itself, one certainly of little importance, is, in my opinion, not capable of being proved or disproved. The authorities, as they are called, that is, the passages in monkish writers which mention this transaction are neither sufficiently circumstantial, nor consistent nor impartial nor contemporaneous, to afford ground for rational belief; or, at least, there must always remain a strong shade of uncertainty. And it is plain, that different reports of the story prevailed, so as to induce some to imagine that there were two Elgivas, one queen, the other concubine. But the monkish chroniclers, *experto credite*, are not entitled to so much ceremony.

city.* A sort of general superintendence was admitted as an attribute of this primacy, so that the bishops of Rome were entitled, and indeed bound, to remonstrate, when any error or irregularity came to their knowledge, especially in the western churches, a greater part of which had been planted by them, and were connected, as it were by filiation, with the common capital of the Roman empire and of Christendom.† Various causes had a tendency to prevent the bishops of Rome from augmenting their authority in the East, and even to diminish that which they had occasionally exercised; the institution of patriarchs at Antioch, Alexandria, and afterward at Constantinople, with extensive rights of jurisdiction; the difference of rituals and discipline; but, above all, the many disgusts taken by the Greeks, which ultimately produced an irreparable schism between the two churches in the ninth century. But, within the pale of the Latin church, every succeeding age enhanced the power and dignity of the Roman see. By the constitution of the church, such at least as it became in the fourth century, its divisions being arranged in conformity to those of the empire, every province ought to have its metropolitan, and every vicariate its ecclesiastical exarch or primate. The Bishop of Rome presided, in the latter capacity, over the Roman vicariate, comprehending southern Italy, and the three chief Mediterranean islands. But, as it happened, none of the ten provinces forming this division had any metropolitan; so that the popes exercised all metropolitical functions within them, such as the consecration of bishops, the convocation of synods, the ultimate decision of appeals, and many other sorts of authority. These provinces are sometimes called the Roman patriarchate; the bishops of Rome having always been reckoned one, generally indeed the first of the patriarchs; each of whom was at the head of all the metropolitans within his limits, but without exercising those privileges which, by the ecclesiastical constitution, appertained to the latter. Though the Roman patriarchate, properly so called, was comparatively very small in extent, it gave its chief, for the reason mentioned, advantages in point of authority which the others did not possess.*

Patriarchate of Rome.

I may perhaps appear to have noticed circumstances interesting only to ecclesiastical scholars. But it is important to apprehend this distinction of the patriarchate from the primacy of Rome, because it was by extending the boundaries of the former, and by applying the maxims of her administration in the south of Italy to all the western churches, that she accomplished the first object of her scheme of usurpation, in subverting the provincial system of government under the metropolitans. Their first encroachment of this kind was in the province of Illyricum, which they annexed in a manner to their own patriarchate, by not permitting any bishops to be consecrated without their consent.† This was before the end of the fourth century. Their subsequent advances were, however, very gradual. About the middle of the sixth century, we find them confirming the elections of archbishops of Milan.‡ They came by degrees to exercise, though not always successfully, and seldom without opposition, an appellant jurisdiction over the causes of bishops, deposed or cen

* These foundations of the Roman primacy are indicated by Valentinian III., a great favourer of that see, in a novel of the year 455: Cum igitur sedis apostolicæ primatum B. Petri meritum, qui est principeps sacerdotalis coronæ, et Romanæ dignitas civitatis, sacræ etiam synodi firmavit auctoritas. The last words allude to the sixth canon of the Nicene council, which establishes, or recognises, the patriarchal supremacy, in their respective districts, of the churches of Rome, Antioch, and Alexandria.—De Marca, de Concordantiâ Sacerdotii et Imperii, l. i., c. 8. At a much earlier period, Irenæus rather vaguely, and Cyprian more positively, admit, or rather assert, the primacy of the church of Rome, which the latter seems even to have considered as a kind of centre of Catholic unity, though he resisted every attempt of that church to arrogate a controlling power. See his treatise De Unitate Ecclesiæ.

† Dupin, De antiquâ Ecclesiæ Disciplinâ, p. 306, et seqq. Histoire du Droit public ecclésiastique François, p. 149. The opinion of the Roman see's supremacy, though apparently rather a vague and general notion, as it still continues in those Catholics who deny its infallibility, seems to have prevailed very much in the fourth century. Fleury brings remarkable proofs of this from the writings of Socrates, Sozomen, Ammianus Marcellinus, and Optatus.—Hist Ecclés., t. iii., p. 282 320, 449; iv. p. 227.

* Dupin, De antiquâ Ecctes. Disciplinâ, p. 35 &c. Giannone, Ist. di Napoli, l. n., c. 8; l. iii., c 6. De Marca, l. i., c. 7, et alibi There is some disagreement among these writers as to the extent of the Roman patriarchate, which some suppose to have even at first comprehended all the western churches, though they admit that, in a more particular sense, it was confined to the vicariate of Rome.

† Dupin, p. 66. Fleury, Hist. Ecclés., t. v., p. 373. The ecclesiastical province of Illyricum included Macedonia. Siricius, the author of this encroachment, seems to have been one of the first usurpers. In a letter to the Spanish bishops (A. D. 375), he exalts his own authority very high.—De Marca, l. i., c. 8.

‡ St. Marc, t. i., p. 139, 153

sured in provincial synods. This, indeed, had been granted, if we believe the fact, by the canons of a very early council, that of Sardica in 347, so far as to permit the pope to order a revision of the process, but not to annul the sentence.* Valentinian III., influenced by Leo the Great, one of the most ambitious of pontiffs, had gone a great deal farther, and established almost an absolute judicial supremacy in the Holy See.† But the metropolitans were not inclined to surrender their prerogatives; and, upon the whole, the papal authority had made no decisive progress in France, or perhaps anywhere beyond Italy, till the pontificate of Gregory I.

[A. D 590–604.] This celebrated person was not distinguished by learning, which he affected to depreciate, nor by his literary performances, which the best critics consider as below mediocrity, but by qualities more necessary for his purpose, intrepid ambition and unceasing activity. He maintained a perpetual correspondence with the emperors and their ministers, with the sovereigns of the western kingdoms with all the hierarchy of the Catholic church employing, as occasion dictated, the language of devotion, arrogance, or adulation.* Claims hitherto disputed, or half preferred, assumed under his hands a more definite form; and nations too ignorant to compare precedents or discriminate principles, yielded to assertions confidently made by the authority which they most respected. Gregory dwelt more than his predecessors upon the power of the keys, exclusively or at least principally committed to St. Peter, which had been supposed in earlier times, as it is now by the Gallican Catholics, to be inherent in the general body of bishops joint sharers of one indivisible episcopacy. And thus the patriarchal rights, being manifestly of mere ecclesiastical institution, were artfully confounded, or, as it were, merged in the more paramount supremacy of the papal chair. From the time of Gregory, the popes appear in a great measure to have thrown away that scaffolding, and relied in preference on the pious veneration of the people, and on the opportunities which might occur for enforcing their dominion with the pretence of divine authority.†

Gregory I

It cannot, I think, be said, that any material acquisitions of ecclesiastical power were obtained by the successors of Gregory for nearly one hundred and fifty years.‡ As none of them possessed

* Dupin, p. 109. De Marca, l. vi., c. 14. These canons have been questioned, and Dupin does not seem to lay much stress on their authority, though I do not perceive that either he or Fleury (Hist. Ecclés, t. iii., p. 372) doubts their genuineness. Sardica was a city of Illyricum, which the translator of Mosheim has confounded with Serdes.

Consultations or references to the Bishop of Rome, in difficult cases of faith or discipline, had been common in early ages, and were even made by provincial and national councils. But these were also made to other bishops, eminent for personal merit or the dignity of their sees. The popes endeavoured to claim this as a matter of right. Innocent I. asserts (A. D. 402) that he was to be consulted, quoties fidei ratio ventilatur; and Gelasius (A. D. 492) quantum ad religionem pertinet, non nisi apostolicæ sedi, juxtà canones, deberi summa judicii totius. As the oak is in the acorn, so said these maxims contain the system of Bellarmine.—De Marca, l. i., c. 10; and l. vii., 12. Dupin.

† Some bishops belonging to the province of Hilary, metropolitan of Arles, appealed from his sentence to Leo, who not only entertained their appeal, but presumed to depose Hilary. This assumption of power would have had little effect, if it had not been seconded by the emperor in very unguarded language: hoc perenni sanctione decernimus, ne quid tam episcopis Gallicanis, quam aliarum provinciarum, contra consuetudinem veterem liceat sine auctoritate viri venerabilis papæ urbis æternæ tentare, sed illis omnibusque pro lege sit, quidquid sanxit vel sanxerit apostolicæ sedis auctoritas.—De Marca, De Concordantiâ Sacerdotii et Imperii, l. i., c. 8. The same emperor enacted, that any bishop who refused to attend the tribunal of the pope when summoned, should be compelled by the governor of his province; ut quisquis episcoporum ad judicium Romani episcopi evocatus venire neglexerit, per moderatorem ejusdem provinciæ adesse cogatur.—Id., l. vii., c. 13. Dupin. De Ant. Discipl. p. 29 et 171.

* The flattering style in which this pontiff addressed Brunehaut and Phocas, the most flagitious monsters of his time, is mentioned in all civil and ecclesiastical histories. Fleury quotes a remarkable letter to the patriarchs of Antioch and Alexandria, wherein he says that St. Peter has one see, divided into three, Rome, Antioch, and Alexandria, stooping to this absurdity, and inconsistence with his real system, in order to conciliate their alliance against his more immediate rival, the patriarch of Constantinople.—Hist. Ecclés., t. viii., p. 124.

† Gregory seems to have established the appellant jurisdiction of the see of Rome, which had been long in suspense. Stephen, a Spanish bishop, having been deposed, appealed to Rome. Gregory sent a legate to Spain, with full powers to confirm or rescind the sentence. He says in his letter on this occasion; à sede apostolicâ, quæ omnium ecclesiarum caput est, causa hæc audienda ac diremenda fuerat.—De Marca, l. vii., c. 18. In writing to the bishops of France, he enjoins them to obey Virgilius, bishop of Arles, whom he has appointed his legate in France, secundùm antiquam consuetudinem; so that if any contention should arise in the church, he may appease it by his authority, as vicegerent of the apostolic see · auctoritatis suæ vigore, vicibus nempe apostolicæ sedis functus, discretâ moderatione compescat.—Gregorii Opera, t. ii., p. 783 (edit. Benedict). Dupin, p. 34. Pasquier, Recherches de la France l. iii., c. 9.

‡ I observe that some modern publications are

vigour and reputation equal to his own, it might even appear that the papal influence was retrograde. But, in effect, the principles which supported it were taking deep root and acquiring strength by occasional, though not very frequent exercise. Appeals to the pope were sometimes made by prelates dissatisfied with a local sentence; but his judgment of reversal was not always executed, as we perceive by the instance of Bishop Wilfrid.* National councils were still convoked by princes, and canons enacted under their authority by the bishops who attended. Though the church of Lombardy was under great subjection during this period, yet those of France, and even of England, planted as the latter had been by Gregory, continued to preserve a tolerable measure of independence.† The first striking infringement of this was made through the influence of an Englishman, Winfrid, better known as St. Boniface, the apostle of Germany. Having undertaken the conversion of Thuringia, and other still heathen countries, he applied to the pope for a commission, and was consecrated bishop without any determinate see. Upon this occasion he took an oath of obedience, and became ever afterward a zealous upholder of the apostolical chair. His success in the conversion of Germany was great, his reputation eminent, which enabled him to effect a material revolution in ecclesiastical government. Pelagius II. had, about 580, sent a pallium, or vest peculiar to metropolitans, to the Bishop of Arles, perpetual vicar of the Roman see in Gaul.‡ Gregory I. had made a similar present to other metropolitans. But it was never supposed that they were obliged to wait for this favour before they received consecration, until a synod of the French and German bishops, held at Frankfort in 742 by Boniface, as legate of Pope Zachary. It was here enacted, that, as a token of their willing subjection to the see of Rome, all metropolitans should request the pallium at the hands of the pope, and obey his lawful commands.§ This was

St. Boniface.

Synod of Frankfort

considerable importance to a supposed concession of the title of universal bishop, made by the Emperor Phocas in 606 to Boniface III., and even appear to date the papal supremacy from this epoch. Those who have imbibed this notion may probably have been misled by a loose expression in Mosheim's Ecclesiastical History, vol. ii., p. 169; though the general tenour of that passage by no means gives countenance to their opinion. But there are several strong objections to our considering this as a leading fact, much less as marking an era in the history of the papacy. 1. Its truth, as commonly stated, appears more than questionable. The Roman pontiffs, Gregory I. and Boniface III., had been vehemently opposing the assumption of this title by the patriarch of Constantinople, not as due to themselves, but as one to which no bishop could legitimately pretend. There would be something almost ridiculous in the emperor's immediately conferring an appellation on themselves, which they had just disclaimed; and though this objection would not stand against evidence, yet when we find no better authority quoted for the fact than Baronius, who is no authority at all, it retains considerable weight. And indeed the want of early testimony is so decisive an objection to any alleged historical fact, that, but for the strange prepossessions of some men, one might rest the case here. Fleury takes no notice of this part of the story, though he tells us that Phocas compelled the patriarch of Constantinople to resign his title. 2. But if the strongest proof could be advanced for the authenticity of this circumstance, we might well deny its importance. The concession of Phocas could have been of no validity in Lombardy, France, and other western countries, where nevertheless the papal supremacy was incomparably more established than in the east. 3. Even within the empire, it could have had no efficacy after the violent death of that usurper, which followed soon afterward. 4. The title of universal bishop is not very intelligible; but, whatever it meant, the patriarchs of Constantinople had borne it before, and continued to bear it ever afterward.—(Dupin, De antiquâ Disciplinâ, p. 329.) 5. The preceding popes, Pelagius II. and Gregory I., had constantly disclaimed the appellation, though it had been adopted by some towards Leo the Great in the council of Chalcedon (Fleury, t. viii., p. 95); nor does it appear to have been retained by the successors of Boniface, at least for some centuries. It is even laid down in the decretum of Gratian, that the pope is not styled universal: Nec etiam Romanus pontifex universalis appellatur (p. 303, edit. 1591); though some refer its assumption to the tenth century.—Nouveau Traité de Diplomatique, t. v., p. 93. In fact, it has never been a usual title. 6. The popes had unquestionably exercised a species of supremacy for more than two centuries before this time, which had lately reached a high point of authority under Gregory I. The rescript of Valentinian III., in 455, quoted in a former note, would certainly be more to the purpose than the letter of Phocas. 7. Lastly, there are no sensible marks of this supremacy making a more rapid progress for a century and a half after the pretended grant of that emperor

* I refer to the English historians for the history of Wilfrid, which neither altogether supports, nor much impeaches the independence, of our Anglo-Saxon church in 700; a matter hardly worth so much contention as Usher and Stillingfleet seem to have thought. The consecration of Theodore by Pope Vitalian in 668 is a stronger fact, and cannot be got over by those injudicious Protestants, who take the bull by the horns.

† Schmidt, t. i., p. 386, 394.

‡ Ut ad instar suum, in Galliarum partibus primum sacerdotis locum obtineat, et quidquid ad gubernationem vel dispensationem ecclesiastici status gerendum est, servatis patrum regulis, et sedis apostolicæ constitutis, faciat. Preterea, pallium illi concedit, &c.—Dupin, p. 34. Gregory I. confirmed this vicariat to Virgilius, bishop of Arles, and gave him the power of convoking synods.—De Marca, l. vi., c. 7.

§ Decrevimus, says Boniface, in nostro synodali

construed by the popes to mean a promise of obedience before receiving the pall, which was changed in after times by Gregory VII. into an oath of fealty.*

This council of Frankfort claims a leading place as an epoch in the history of the papacy. Several events ensued, chiefly of a political nature, which rapidly elevated that usurpation almost to its greatest height. Subjects of the throne of Constantinople, the popes had not as yet interfered, unless by mere admonition, with the temporal magistrate. The first instance wherein the civil duties of a nation and the rights of a crown appear to have been submitted to his decision, was in that famous reference as to the deposition of Childeric. It is impossible to consider this in any other light than as a point of casuistry laid before the first religious judge in the church. Certainly the Franks, who raised the king of their choice upon their shields, never dreamed that a foreign priest had conferred upon him the right of governing. Yet it was easy for succeeding advocates of Rome to construe this transaction very favourably for its usurpation over the thrones of the earth.†

I shall but just glance at the subsequent political revolutions of that period: the invasion of Italy by Pepin, his donation of the exarchate to the Holy See, the conquest of Lombardy by Charlemagne, the patriarchate of Rome conferred upon both these princes, and the revival of the Western Empire in the person of the latter. These events had a natural tendency to exalt the papal supremacy, which it is needless to indicate. But a circumstance of a very different nature contributed to this in a still greater degree. About the conclusion of the eighth century, there appeared, under the name of one Isidore, an unknown person, a collection of ecclesiastical canons, now commonly denominated the False Decretals.* These purported to be rescripts or decrees of the early bishops of Rome; and their effect was to diminish the authority of metropolitans over their suffragans, by establishing an appellant jurisdiction of the Roman See in all causes, and by forbidding national councils to be holden without its consent. Every bishop, according to the decretals of Isidore, was amenable only to the immediate tribunal of the pope; by which one of the most ancient rights of the provincial synod was abrogated. Every accused person might not only appeal from an inferior sentence, but remove an unfinished process before the supreme pontiff. And the latter, instead of directing a revision of the proceedings by the original judges, might annul them by his own authority; a strain of jurisdiction beyond the canons of Sardica, but certainly warranted by the more recent practice of Rome. New sees were not to be erected, nor bishops translated from one see to another, nor their resignations accepted, without the sanction of the pope. They were still indeed to be consecrated by the metropolitan, but in the pope's name. It has been plausibly suspected that these decretals were forged by some bishop, in jealousy or resentment; and their general reception may at least be partly ascribed to such sentiments. The archbishops were exceedingly powerful, and might often abuse their superiority over inferior prelates; but the whole

conventu, et confessi sumus fidem catholicam, et unitatem et subjectionem Romanæ ecclesiæ fine tenus servare, S. Petro et vicario ejus velle subjici, metropolitanos pallia ab illâ sede quærere, et, per omnia, præcepta S. Petri canonicè sequi.—De Marca l. vi., c. 7. Schmidt, t. i., p. 424, 438, 446. This writer justly remarks the obligation which Rome had to St. Boniface, who anticipated the system of Isidore. We have a letter from him to the English clergy, with a copy of canons passed in one of his synods, for the exaltation of the apostolic see, but the church of England was not then inclined to acknowledge so great a supremacy in Rome.—Collier's Eccles. History, p. 128.

In the eighth general council, that of Constantinople in 872, this prerogative of sending the pallium to metropolitans was not only confirmed to the pope, but extended to the other patriarchs, who had every disposition to become as great usurpers as their more fortunate elder brother.

* De Marca, ubi supra. Schmidt, t. ii., p. 262. According to the latter, this oath of fidelity was exacted in the ninth century; which is very probable, since Gregory VII. himself did but fill up the sketch which Nicholas I. and John VIII. had delineated. I have since found this confirmed by Gratian, p. 305.

† Eginhard says that Pepin was made king per *auctoritatem* Romani pontificis; an ambiguous word, which may rise to *command*, or sink to *advice*, according to the disposition of the interpreter.

* The era of the False Decretals has not been precisely fixed; they have seldom been supposed, however, to have appeared much before 800. But there is a genuine collection of canons published by Adrian I., in 785, which contain nearly the same principles, and many of which are copied by Isidore, as well as Charlemagne in his capitularies —De Marca, l. vii., c. 20. Giannone, l. v., c. 6 Dupin, de Antiquâ Disciplinâ, p. 133. Fleury, Hist. Eccles., t. ix., p. 500, seems to consider the decretals as older than this collection of Adrian; but I have not observed the same opinion in any other writer. The right of appeal from a sentence of the metropolitan deposing a bishop to the Holy See is positively recognised in the capitularies of Louis the Debonair (Baluze, p. 1000), the three last books of which, according to the collection of Ansegisus, are said to be apostolicâ auctoritate roborata, quia his cudendis maximè apostolica interfuit legatio, p. 1132.

episcopal aristocracy had abundant reason to lament their acquiescence in a system of which the metropolitans were but the earliest victims. Upon these spurious decretals was built the great fabric of papal supremacy over the different national churches; a fabric which has stood after its foundation crumbled beneath it; for no one has pretended to deny, for the last two centuries, that the imposture is too palpable for any but the most ignorant ages to credit.*

Papal encroachments on the hierarchy.

The Gallican church made for some time a spirited, though unavailing struggle, against this rising despotism. Gregory IV., having come into France to abet the children of Louis the Debonair in their rebellion, and threatened to excommunicate the bishops who adhered to the emperor, was repelled with indignation by those prelates. If he comes here to excommunicate, said they, he shall depart hence excommunicated.† In the subsequent reign of Charles the Bald, a bold defender of ecclesiastical independence was found in Hincmar, archbishop of Rheims, the most distinguished statesman of his age. Appeals to the pope, even by ordinary clerks, had become common, and the provincial councils, hitherto the supreme spiritual tribunal as well as legislature, were falling rapidly into decay. The frame of church government, which had lasted from the third or fourth century, was nearly dissolved; a refractory bishop was sure to invoke the supreme court of appeal, and generally met there with a more favourable judicature. Hincmar, a man equal in ambition, and almost in public estimation, to any pontiff, sometimes came off successfully in his contentions with Rome.‡ But time is fatal to the unanimity of coalitions; the French bishops were accessible to superstitious prejudice, to corrupt influence, to mutual jealousy. Above all, they were conscious that a persuasion of the pope's omnipotence had taken hold of the laity. Though they complained loudly, and invoked, like patriots of a dying state names and principles of a freedom that was no more, they submitted almost in every instance to the continual usurpations of the Holy See. One of those, which most annoyed their aristocracy, was the concession to monasteries of exemption from episcopal authority. These had been very uncommon till about the eighth century, after which they were studiously multiplied.* It was naturally a favourite object with the abbots; and sovereigns, in those ages of blind veneration for monastic establishments, were pleased to see their own foundations rendered, as it would seem, more respectable by privileges of independence. The popes had a closer interest in granting exemptions, which attached to them the regular clergy, and lowered the dignity of the bishops. In the eleventh and twelfth centuries, whole orders of monks were declared exempt at a single stroke; and the abuse began to awaken loud complaints, though it did not fail to be aggravated afterward.

And upon civil governments

The principles of ecclesiastical supremacy were readily applied by the popes to support still more insolent usurpations. Chiefs by divine commission of the whole church, every earthly sovereign must be subject to their interference. The bishops indeed had, with the common

Lothaire.

* I have not seen any account of the decretals so clear and judicious as in Schmidt's History of Germany, t. ii., p. 249. Indeed, all the ecclesiastical part of that work is executed in a very superior manner. See also De Marca, l. iii., c. 5; l. vii., c. 20. The latter writer, from whom I have derived much information, is by no means a strenuous adversary of ultramontane pretensions. In fact, it was his object to please both in France and at Rome, to become both an archbishop and a cardinal. He failed nevertheless of the latter hope; it being impossible at that time (1650) to satisfy the papal court, without sacrificing altogether the Gallican church and the crown.

† De Marca, l. iv., c. 11. Velly, &c.

‡ De Marca l. iv., c. 68, &c.; l. vi., c. 14, 28; l. vii., c. 21. Dupin, p. 133, &c. Hist. du Droit Ecclés. François, p. 188, 224. Velly, &c. Hincmar, however, was not consistent; for, having obtained the see of Rheims in an equivocal manner, he had applied for confirmation at Rome, and in other respects impaired the Gallican rights.—Pasquier, Recherches de la France, l. iii., c. 12.

* The earliest instance of a papal exemption is in 455, which indeed is a respectable antiquity. Others scarcely occur till the pontificate of Zachary, in the middle of the eighth century, who granted an exemption to Monte Casino, ita ut nullius juri subjaceat, nisi solius Romani pontificis. See this discussion in Giannone, l. v., c. 6. Precedents for the exemption of monasteries from episcopal jurisdiction occur in Marculfus's forms, compiled towards the end of the seventh century, but these were by royal authority. The kings of France were supreme heads of their national church.—Schmidt, t. i., p. 382. De Marca, l. iii., c. 16. Fleury, Institutions au Droit, t. i., p. 288. Muratori, Dissert. 70 (t. iii., p. 404, Italian), is of opinion that exemptions of monasteries from episcopal visitation did not become frequent in Italy till the eleventh century; and that many charters of this kind are forgeries. It is held also by some English antiquaries, that no Anglo-Saxon monastery was exempt, and that the first instance is that of Battle Abbey under the Conqueror; the charters of an earlier date having been forged.—Hody on Convocations, p. 20 and 170. It is remarkable that this grant is made by William, and confirmed by Lanfranc.—Collier, p. 256. Exemptions became very usual in England afterward.—Henry, vol. v., p. 332.

weapons of their order, kept their own sovereigns in check; and it could not seem any extraordinary stretch in their supreme head to assert an equal prerogative. Gregory IV., as I have mentioned, became a party in the revolt against Louis I.; but he never carried his threats of excommunication into effect. The first instance where the Roman pontiffs actually tried the force of their arms against a sovereign, was the excommunication of Lothaire, king of Lorraine, and grandson of Louis the Debonair. This prince had repudiated his wife upon unjust pretexts, but with the approbation of a national council, and had subsequently married his concubine. Nicholas I., the actual pope, despatched two legates to investigate this business, and decide according to the canons. They hold a council at Metz, and confirm the divorce and marriage. Enraged at this conduct of his ambassadors, the pope summons a council at Rome, annuls the sentence, deposes the archbishops of Treves and Cologne, and directs the king to discard his mistress. After some shuffling on the part of Lothaire, he is excommunicated; and, in a short time, we find both the king and his prelates, who had begun with expressions of passionate contempt towards the pope, suing humbly for absolution at the feet of Adrian II., successor of Nicholas, which was not granted without difficulty. In all its most impudent pretensions, the Holy See has attended to the circumstances of the time. Lothaire had powerful neighbours, the kings of France and Germany, eager to invade his dominions on the first intimation from Rome; while the real scandalousness of his behaviour must have intimidated his conscience, and disgusted his subjects.

Excommunications.

Excommunication, whatever opinions may be entertained as to its religious efficacy, was originally nothing more in appearance than the exercise of a right which every society claims, the expulsion of refractory members from its body. No direct temporal disadvantages attended this penalty for several ages, but, as it was the most severe of spiritual censures, and tended to exclude the object of it not only from a participation in religious rites, but, in a considerable degree, from the intercourse of Christian society, it was used sparingly, and upon the gravest occasions. Gradually, as the church became more powerful and more imperious, excommunications were issued upon every provocation, rather as a weapon of ecclesiastical warfare than with any regard to its original intention. There was certainly some pretext for many of these censures, as the only means of defence within the reach of the clergy, when their possessions were lawlessly violated.* Others were founded upon the necessity of enforcing their contentious jurisdiction, which while it was rapidly extending itself over almost all persons and causes, had not acquired any proper coercive process. The spiritual courts in England, whose jurisdiction is so multifarious, and, in general, so little of a religious nature, had till lately no means even of compelling an appearance, much less of enforcing a sentence, but by excommunication.† Princes, who felt the inadequacy of their own laws to secure obedience called in the assistance of more formidable sanctions. Several capitularies of Charlemagne denounce the penalty of excommunication against incendiaries, or deserters from the army. Charles the Bald procured similar censures against his revolted vassals. Thus the boundary between temporal and spiritual offences grew every day less distinct; and the clergy were encouraged to fresh encroachments, as they discovered the secret of rendering them successful.‡

The civil magistrate ought undoubtedly to protect the just rights and lawful jurisdiction of the church It is not so evident that he should attach temporal penalties to her censures. Excommunication has never carried such a presumption of moral turpitude as to disable a man, upon any solid principles, from the usual privileges of society. Superstition and tyranny, however, decided otherwise. The support due to church censures by temporal judges is vaguely declared in the capitularies of Pepin and Charlemagne. It became, in later ages, a more established principle in France and England, and, I presume, in other countries. By our common law, an excommunicated person is incapable of being a witness, or of bringing an action, and he may be detained in prison until he obtains absolution. By the establishments of St. Louis, his estate or person might be attached by the magistrate.§

* Schmidt, t. iv., p. 217. Fleury, Institutions au Droit, t. ii., p. 192.

† By a recent statute, 53 G. III., c. 127, the writ De excommunicato capiendo, as a process in contempt, was abolished in England, but retained in Ireland.

‡ Mém e l'Acad. des Inscript., t. xxxix., p. 596 &c.

§ Ordonnances des Rois, t. i., p. 121. But an excommunicated person might sue in the lay though not in the spiritual, court. No law seem

These actual penalties were attended by marks of abhorrence and ignominy still more calculated to make an impression on ordinary minds. They were to be shunned, like men infected with leprosy, by their servants, their friends, and their families. Two attendants only, if we may trust a current history, remained with Robert, king of France, who, on account of an irregular marriage, was put to this ban by Gregory V.; and these threw all the meats which had passed his table into the fire.* Indeed, the mere intercourse with a proscribed person incurred what was called the lesser excommunication, or privation of the sacraments, and required penitence and absolution. In some places, a bier was set before the door of an excommunicated individual, and stones thrown at his windows; a singular method of compelling his submission.† Everywhere the excommunicated were debarred of a regular sepulture, which, though obviously a matter of police, has, through the superstition of consecrating burial-grounds, been treated as belonging to ecclesiastical control. Their carcasses were supposed to be incapable of corruption, which seems to have been thought a privilege unfit for those who had died in so irregular a manner.‡

Interdicts.

But as excommunication, which attacked only one and perhaps a hardened sinner, was not always efficacious, the church had recourse to a more comprehensive punishment. For the offence of a nobleman, she put a county, for that of a prince, his entire kingdom, under an interdict, or suspension of religious offices. No stretch of her tyranny was perhaps so outrageous as this. During an interdict, the churches were closed, the bells silent, the dead unburied, no rite but those of baptism and extreme unction performed. The penalty fell upon those who had neither partaken nor could have prevented the offence; and the offence was often but a private dispute, in which the pride of a pope or bishop had been wounded. Interdicts were so rare before the time of Gregory VII., that some have referred them to him as their author; instances may however be found of an earlier date and especially that which accompanied the abovementioned excommunication of Robert, king of France. They were afterward issued not unfrequently against kingdoms; but in particular districts they continually occurred.*

This was the mainspring of the machinery that the clergy set in motion, the lever by which they moved the world. From the moment that these interdicts and excommunications had been tried, the powers of the earth might be said to have existed only by sufferance. Nor was the validity of such denunciations supposed to depend upon their justice. The imposer indeed of an unjust excommunication was guilty of a sin; but the party subjected to it had no remedy but submission. He who disregards such a sentence, says Beaumanoir, renders his good cause bad.† And indeed, without annexing so much importance to the direct consequences of an ungrounded censure, it is evident that the received theory of religion concerning the indispensable obligation and mysterious efficacy of the rites of communion and confession, must have induced scrupulous minds to make any temporal sacrifice rather than incur their privation. One is rather surprised at the instances of failure, than of success, in the employment of these spiritual weapons against sovereigns, or the laity in general. It was perhaps a fortunate circumstance for Europe, that they were not introduced, upon a large scale, during the darkest ages of superstition. In the eighth or ninth centuries they would probably have met with a more implicit obedience. But after Gregory VII., as the spirit of ecclesiastical usurpation became more violent, there grew up by slow degrees an opposite feeling in the laity, which ripened into an alienation of sentiment from the church, and a conviction of that sacred truth, which superstition and sophistry have endeavoured to eradicate from the heart of man, that no tyrannical government can be founded on a divine commission.

Excommunications had very seldom, if ever, been levelled at the head of a sovereign before the instance of Lothaire. His ignominious submission, and the gen-

Further usurpation of the popes.

to have been so severe in this respect as that of England; though it is not strictly accurate to say with Dr. Cosens (Gibson's Codex, p. 1102), that the writ De excommun. capiendo is a privilege peculiar to the English church.

* Velly, t. ii.

† Vaissette, Hist. de Languedoc, t. iii. Appendix, p. 350. Du Cange, v. Excommunicatio.

‡ Du Cange, v. Imblocatus: where several authors are referred to, for the constant opinion among the members of the Greek church, that the bodies of excommunicated persons remain in statu quo.

* Giannone, l. vii., c. 1. Schmidt, t. iv., p. 220. Dupin, De antiquâ Eccl. Disciplinâ, p. 288. St Marc, t. ii., p. 535. Fleury, Institutions, t. ii. 200. † P. 261.

eral feebleness of the Carlovingian line, produced a repetition of the menace at least, and in cases more evidently beyond the cognizance of a spiritual authority. Upon the death of this Lothaire, his uncle, Charles the Bald, having possessed himself of Lorraine, to which the Emperor Louis II. had juster pretensions, the pope, Adrian II., warned him to desist, declaring that any attempt upon that country would bring down the penalty of excommunication. Sustained by the intrepidity of Hincmar, the king did not exhibit his usual pusillanimity, and the pope in this instance failed of success.* But John VIII., the next occupier of the chair of St. Peter, carried his pretensions to a height which none of his predecessors had reached. The Carlovingian princes had formed an alliance against Boson, the usurper of the kingdom of Arles. The pope writes to Charles the Fat: I have adopted the illustrious prince Boson as my son; be content therefore with your own kingdom; for I shall instantly excommunicate all who attempt to injure my son.† In another letter to the same king, who had taken some property from a convent, he enjoins him to restore it within sixty days, and to certify by an envoy that he had obeyed the command; else an excommunication would immediately ensue, to be followed by still severer castigation, if the king should not repent upon the first punishment.‡ These expressions seem to intimate a sentence of deposition from his throne, and thus anticipate by two hundred years the famous era of Gregory VII., at which we shall soon arrive. In some respects, John VIII. even advanced pretensions beyond those of Gregory. He asserts very plainly a right of choosing the emperor, and may seem indirectly to have exercised it in the election of Charles the Bald, who had not primogeniture in his favour.§ This prince, whose restless ambition was united with meanness as well as insincerity, consented to sign a capitulation, on his coronation at Rome, in favour of the pope and church, a precedent which was improved upon in subsequent ages.‖ Rome was now prepared to rivet her fetters upon sovereigns, and at no period have the condition of society and the circumstances of civil government been so favourable for her ambition. But the consummation was still suspended, and even her progress arrested, for more than a hundred and fifty years. This dreary interval is filled up, in the annals of the papacy, by a series of revolutions and crimes. Six popes were deposed, two murdered, and one mutilated. Frequently two or even three competitors, among whom it is not always possible by any genuine criticism to distinguish the true shepherd, drove each other alternately from the city. A few respectable names appear thinly scattered through this darkness; and sometimes, perhaps, a pope, who had acquired estimation by his private virtues, may be distinguished by some encroachment on the rights of princes, or the privileges of national churches. But, in general, the pontiffs of that age had neither leisure nor capacity to perfect the great system of temporal supremacy, and looked rather to a vile profit from the sale of episcopal confirmations, or of exemptions to monasteries.*

Their degeneracy in the tenth century.

The corruption of the head extended naturally to all other members of the church. All writers concur in stigmatizing the dissoluteness and neglect of decency that prevailed among the clergy. Though several codes of ecclesiastical discipline had been compiled by particular prelates, yet neither these nor the ancient canons were much regarded. The bishops, indeed, who were to enforce them, had most occasion to dread their severity. They were obtruded upon their sees, as the supreme pontiffs were upon that of Rome, by force or corruption. A child of five years old was made archbishop of Rheims. The see of Narbonne was purchased for another at the age of ten.† By this relaxation of morals the priesthood began to lose its hold upon the prejudices of mankind. These are nourished chiefly, indeed, by shining examples of piety and virtue, but also, in a superstitious age, by ascetic observances, by the fasting and watching of monks and hermits; who have obviously so bad a lot in this life, that men are induced to conclude that they must have secured a better reversion in futurity. The regular clergy, accordingly, or monastic orders, who prac-

Corruption of morals.

* De Marca, l. iv., c. 11.
† Schmidt, t. ii., p. 260.
‡ Dunoribus deinceps sciens te verberibus eruditionum.—Schmidt, p. 261.
§ Baluz. Capitularia, t. ii., p. 251. Schmidt, t. ii., p. 197.
‖ Id., p. 199

* Schmidt, t. ii., p. 414. Mosheim. St. Marc Muratori, Ann. d'Italia, passim.
† Vaissette, Hist. de Languedoc, t. ii., p. 252. It was almost general in the church to have bishops under twenty years old.—Idem, p. 149. Even the Pope Benedict IX. is said to have been only twelve, but this has been doubted.

tised, at least apparently, the specious impostures of self-mortification, retained at all times a far greater portion of respect than ordinary priests, though degenerated themselves, as was admitted, from their primitive strictness.

Neglect of rules of celibacy.

Two crimes, or at least violations of ecclesiastical law, had become almost universal in the eleventh century, and excited general indignation; the marriage or concubinage of priests, and the sale of benefices. By an effect of those prejudices in favour of austerity to which I have just alluded, celibacy had been, from very early times, enjoined as an obligation upon the clergy. Some of the fathers permitted those already married for the first time, and to a virgin, to retain their wives after ordination, as a kind of indulgence, of which it was more laudable not to take advantage; and this, after prevailing for a length of time in the Greek church, was sanctioned by the council of Trullo in 691,* and had ever since continued one of the distinguishing features of its discipline. The Latin church, however, did not receive these canons; and has uniformly persevered in excluding the three orders of priests, deacons, and subdeacons, not only from contracting matrimony, but from cohabiting with wives espoused before their ordination. The prohibition, however, during some ages, existed only in the letter of her canons.† In every country, the secular or parochial clergy kept women in their houses, upon more or less acknowledged terms of interconrse, by a connivance of their ecclesiastical superiors, which almost amounted to a positive toleration. The sons of priests were capable of inheriting by the law of France and also of Castile.‡ Some vigorous efforts had been made in England by Dunstan, with the assistance of King Edgar, to dispossess the married canons, if not the parochial clergy, of their benefices; but the abuse, if such it is to be considered, made incessant progress, til the middle of the eleventh century There was certainly much reason for the rulers of the church to restore this part of their discipline, since it is by cutting off her members from the charities of domestic life that she secures their entire affection to her cause, and renders them, like veteran soldiers, independent of every feeling but that of fidelity to their commander, and regard to the interests of their body. Leo IX., accordingly, one of the first pontiffs who retrieved the honour of the apostolic chair, after its long period of ignominy, began in good earnest the difficult work of enforcing celibacy among the clergy.* His successors never lost sight of this essential point of discipline. It was a struggle against the natural rights and strongest affections of mankind, which lasted for several ages, and succeeded only by the toleration of greater evils than those it was intended to remove. The laity, in general, took part against the married priests, who were reduced to infamy and want, or obliged to renounce their dearest connexions. In many parts of Germany, no ministers were left to perform divine services.† But perhaps there was no country where the rules of celibacy met with so little attention as in England. It was acknowledged, in the reign of Henry I., that the greater and better part of the clergy were married; and that prince is said to have permitted them to retain their wives.‡ But the hierarchy never

* This council was held at Constantinople in the dome of the palace, called Trullus, by the Latins. The word Trullo, though solœcistical, is used, I believe, by ecclesiastical writers in English.—St. Marc, t. i., p. 294. Art de vérifier les Dates, t. i., p. 157. Fleury, Hist. Ecclés., t. ix., p. 110. Bishops are not within this permission, and cannot retain their wives by the discipline of the Greek church.

† This prohibition is sometimes repeated in Charlemagne's capitularies; but I have not observed that he notices its violation as a notorious abuse. It is probable, therefore, that the open concubinage or marriage of the clergy was not general until a later period. And Fleury declares, that he has found no instance of it before 893, in the case of a parish priest at Chalons, who gave great scandal by publicly marrying.—Hist. Ecclés, t. xi., p. 594.

‡ Recueil des Historiens, t. xi., preface. Marina, Ensayo sobre las siete partidas, c. 221, 223. This was by virtue of the general indulgence shown by the customs of that country to concubinage, or *barragania*; the children of such a union always inheriting in default of those born in solemn wedlock.—Ibid.

* St. Marc, t. iii., p. 152. 164, 219, 602, &c.

† Schmidt, t. iii., p. 279. Martenne, Thesaurus Anecdotorum, t. i., p. 230. A Danish writer draws a still darker picture of the tyranny exercised towards the married clergy, which, if he does not exaggerate, was severe indeed: alii membris truncabantur, alii occidebantur, alii de patriâ expellebantur, pauci sua retinuere.—Langebek, Script. Rerum Danicarum, t. i., p. 380. The prohibition was repeated by Waldemar II. in 1222, so that there seems to have been much difficulty found.—Idem, p. 287 and p. 272.

‡ Wilkins, Concilia, p 387. Chronicon Saxon Collier, p. 248, 286, 294. Lyttleton, vol. iii., p 328. The third Lateran council, fifty years afterward, speaks of the detestable custom of keeping concubines, long used by the English clergy. Cum in Angliâ pravâ et detestabili consuetudine et longo tempore fuerit obtentum, ut clerici in domibus suis fornicarias habeant.—Labbé, Concilia, t. x., p 1633. Eugenius IV. sent a legate to impose celibacy on the Irish clergy.—Lyttleton's Henry II., vol. ii., p. 42.

relaxed in their efforts; and all the councils, general or provincial, of the twelfth century, utter denunciations against *concubinary* priests.* After that age we do not find them so frequently mentioned; and the abuse by degrees, though not suppressed, was reduced within limits at which the church might connive.

Simony. Simony, or the corrupt purchase of spiritual benefices, was the second characteristic reproach of the clergy in the eleventh century. The measures taken to repress it deserve particular consideration, as they produced effects of the highest importance in the history of the middle ages. According to the primitive custom of the church, an episcopal vacancy was filled up by election of the clergy and people belonging to the city or diocess. The subject of their choice was, after the establishment of the federate or provincial system, to be approved or rejected by the metropolitan and his suffragans; and, if approved, he was consecrated by them.† It is probable that, in almost every case, the clergy took a leading part in the selection of their bishops; but the consent of the laity was absolutely necessary to render it valid.‡ They were, however, by degrees excluded from any real participation, first in the Greek, and finally in the western church. But this was not effected till pretty late times; the people fully preserved their elective rights at Milan in the eleventh century; and traces of their concurrence may be found both in France and Germany in the next age.§

Episcopal elections.

It does not appear that the early Christian emperors interposed with the freedom of choice any farther than to make their own confirmation necessary in the great patriarchal sees, such as Rome and Constantinople, which were frequently the objects of violent competition, and to decide in controverted elections.* The Gothic and Lombard kings of Italy followed the same line of conduct.† But in the French monarchy a more extensive authority was assumed by the sovereign. Though the practice was subject to some variation, it may be said generally that the Merovingian kings, the line of Charlemagne, and the German emperors of the house of Saxony, conferred bishoprics either by direct nomination, or, as was more regular, by recommendatory letters to the electors.‡ In England also, before the conquest, bishops were appointed in the wittenagemot; and even in the reign of William, it is said that Lanfranc was raised to the see of Canterbury by consent of parliament.§ But, independently of this prerogative, which length of time and the tacit sanction of the people have rendered unquestionably legitimate, the sovereign had other means of controlling the election of a bishop. Those estates and honours which compose the temporalities of the see, and without which the naked spiritual privileges would not have tempted an avaricious generation, had

* Quidam sacerdotes Latini, says Innocent III., in domibus suis habent concubinas, et nonnulli aliquas sibi non metuunt desponsare.—Opera Innocent III., p. 558. See also p. 300 and 407. The latter cannot be supposed a very common case, after so many prohibitions; the more usual practice was to keep a female in their houses, under some pretence of relationship or servitude, as is still said to be usual in Catholic countries.—Du Cange, v. Focaria. A writer of respectable authority asserts, that the clergy frequently obtained a bishop's license to cohabit with a mate.—Harmer's [Wharton's] Observations on Burnet, p. 11. I find a passage in Nicholas de Clemangis, about 1400, quoted in Lewis's life of Pecock, p. 30. Plerisque in diocesibus, rectores parochiarum ex certo et conducto cum his prælatis pretio, passim et publicè concubinas tenent. This, however, does not amount to a direct license.

The marriages of English clergy are noticed and condemned in some provincial constitutions of 1237.—Matt. Paris, p. 381. And there is, even so late as 1404, a mandate by the Bishop of Exeter against married priests.—Wilkins, Concilia, t. iii., p 277.

† Marca, De Concordantiâ, &c., l. vi., c. 2.

‡ Father Paul on Benefices, c .

§ De Marca, ubi supra. Schmidt, t. iv p. 173.

The form of election of a bishop of Puy, in 1053, runs thus: clerus, populus, et militia elegimus.—Vaissette, Hist. de Languedoc, t. ii. Appendix, p. 220. Even Gratian seems to admit in one place that the laity had a sort of share, though no decisive voice, in filling up an episcopal vacancy Electio clericorum est, petitio plebis.—Decret., l. i., distinctio 62. And other subsequent passages confirm this.

* Gibbon, c. 20. St. Marc, Abrégé Chronologique, t. i., p. 7.

† Fra Paolo on Benefices, c. ix. Giannone, l. iii., c. 6; l. iv., c. 12. St. Marc, t. i., p. 37.

‡ Schmidt, t. i., p. 386; t. ii., p. 245, 487. This interference of the kings was perhaps not quite conformable to their own laws, which only reserved to them the confirmation. Episcopo decedente, says a constitution of Clotaire II. in 615, in loco ipsius, qui a metropolitano ordinari debet, a provincialibus, a clero et populo eligatur: et si persona condigna fuerit, per ordinationem principis ordinetur.—Baluz. Capitul., t. i., p. 21. Charlemagne is said to have adhered to this limitation, leaving elections free, and only approving the person, and conferring investiture on him.—F. Paul, on Benefices, c. xv. But a more direct influence was restored afterward. Ivon, bishop of Chartres, about the year 1100, thus concisely expresses the several parties concurring in the creation of a bishop: eligente clero, suffragante populo, *dono* regis, per manum metropolitani, approbante Romano pontifice.—Du Chesne, Script. Rerum Gallicarum, t. iv., p. 174.

§ Lyttleton's Hist. of Henry II., vol. iv. p. 144

chiefly been granted by former kings, and were assimilated to lands held on a beneficiary tenure. As they seemed to partake of the nature of fiefs, they required similar formalities; investiture by the lord, and an oath of fealty by the tenant. Charlemagne is said to have introduced this practice; and, by way of visible symbol, as usual in feudal institutions, to have put the ring and crosier into the hands of the newly-consecrated bishop. And this continued for more than two centuries afterward without exciting any scandal or resistance.*

Investitures.

The church has undoubtedly surrendered part of her independence in return for ample endowments and temporal power; nor could any claim be more reasonable than that of feudal superiors to grant the investiture of dependant fiefs. But the fairest right may be sullied by abuse; and the sovereigns, the lay-patrons, the prelates of the tenth and eleventh centuries, made their powers of nomination and investiture subservient to the grossest rapacity.† According to the ancient canons, a benifice was avoided by any simoniacal payment or stipulation. If these were to be enforced, the church must almost be cleared of its ministers. Either through bribery in places where elections still prevailed, or through corrupt agreements with princes, or, at least, customary presents to their wives and ministers, a large proportion of the bishops had no valid tenure in their sees. The case was perhaps worse with inferior clerks; in the church of Milan, which was notorious for this corruption, not a single ecclesiastic could stand the test, the archbishop exacting a price for the collation of every benefice.‡

Imperial confirmation of popes.

The bishops of Rome, like those of inferior sees, were regularly elected by the citizens, laymen as well as ecclesiastics. But their consecration was deferred until the popular choice had received the sovereign's sanction. The Romans regularly despatched letters to Constantinople or to the exarchs of Ravenna, praying that their election of a pope might be confirmed. Exceptions, if any, are infrequent while Rome was subject to the eastern empire.* This, among other imperial prerogatives, Charlemagne might consider as his own. He possessed the city, especially after his coronation as emperor, in full sovereignty; and, even before that event, had investigated, as supreme chief, some accusations preferred against the Pope Leo III. No vacancy of the papacy took place after Charlemagne became emperor; and it must be confessed, that, in the first which happened under Louis the Debonair, Stephen IV. was consecrated in haste without that prince's approbation.† But Gregory IV., his successor, waited till his election had been confirmed; and, upon the whole, the Carlovingian emperors, though less uniformly than their predecessors, retained that mark of sovereignty.‡ But during the disorderly state of Italy which followed the last reigns of Charlemagne's posterity, while the sovereignty and even the name of an emperor were in abeyance, the supreme dignity of Christendom was conferred only by the factious rabble of its capital Otho the Great, in receiving the imperial crown, took upon him the prerogatives of Charlemagne. There is even extant a decree of Leo VIII., which grants to him and his successors the right of naming future popes. But the authenticity of this instrument is denied by the Italians.§ It does not appear that the Saxon emperors went to such a length as nomination, except in one instance (that of Gregory V. in 996); but they sometimes not uniformly, confirmed the election of a pope, according to ancient custom. An explicit right of nomination was however conceded to the Emperor Henry III in 1047, as the only means of rescuing the Roman church from the disgrace and depravity into which it had fallen. Henry

* De Marca, p. 416. Giannone, l. vi., c. 7.

Boniface, marquis of Tuscany, father of the Countess Matilda, and by far the greatest prince in Italy, was flogged before the altar by an abbot for selling benefices.—Muratori, ad ann. 1046. The offence was much more common than the punishment, but the two combined furnish a good specimen of the eleventh century.

‡ St. Marc, t. iii., p. 65, 188, 219, 296, 230, 568. Muratori, A. D. 958, 1057, &c. Fleury, Hist. Ecclés., t. xiii., p. 73. The sum, however, appears to have been very small rather like a fee than a tribe

* Le Blanc, Dissertation sur l'Autorité des Empereurs. This is subjoined to his Traité des Monnoyes; but not in all copies, which makes those that want it less valuable.—St. Marc and Muratori, passim.

† Muratori, A. D. 817. St. Marc.

‡ Le Blanc. Schmidt, t. ii., p. 186. St. Marc, t. i., p. 387, 393, &c.

§ St. Marc had defended the authenticity of the instrument in a separate dissertation, t. iv., p. 116 though admitting some interpolations. Pagi in Baronium, t. iv., p. 8, seemed to me to have urged some weighty objections; and Muratori, Annali d'Italia, A. D. 962, speaks of it as a gross imposture, in which he probably goes too far. It obtained credit rather early, and is admitted into the decretum of Gratian, notwithstanding its obvious tendency, p. 211. edit. 1591.

appointed two or three very good popes; acting in this against the warnings of a selfish policy, as fatal experience soon proved to his family.*

This high prerogative was perhaps not designed to extend beyond Henry himself. But, even if it had been transmissible to his successors, the infancy of his son Henry IV., and the factions of that minority, precluded the possibility of its exercise. Nicolas II., in 1059, published a decree, which restored the right of election to the Romans, but with a remarkable variation from the original form. The cardinal bishops (seven in number, holding sees in the neighbourhood of Rome, and consequently suffragans of the pope as patriarch or metropolitan) were to choose the supreme pontiff, with the concurrence first of the cardinal priests and deacons (or ministers of the parish churches of Rome), and afterward of the laity. Thus elected, the new pope was to be presented for confirmation to Henry, "now king and hereafter to become emperor," and to such of his successors as should personally obtain that privilege.† This decree is the foundation of that celebrated mode of election in a conclave of cardinals, which has ever since determined the headship of the church. It was intended not only to exclude the citizens, who had indeed justly forfeited their primitive right, but as far as possible to prepare the way for an absolute emancipation of the papacy from the imperial control; reserving only a precarious and personal concession to the emperors, instead of their ancient legal prerogative of confirmation.

Decree of Nicolas II.

The real author of this decree, and of all other vigorous measures adopted by the popes of that age, whether for the assertion of their independence, or the restoration of discipline, was Hildebrand, archdeacon of the church of Rome, by far the most conspicuous person of the eleventh century. Acquiring by his extraordinary qualities an unbounded ascendency over the Italian clergy, they regarded him as their chosen leader, and the hope of their common cause. He had been empowered singly to nominate a pope, on the part of the Romans,‡ after the death of Leo IX., and compelled Henry III. to acquiesce in his choice of Victor I. No man could proceed more fearlessly towards his object than Hildebrand, nor with less attention to conscientious impediments. Though the decree of Nicolas II., his own work, had expressly reserved the right of confirmation of the young King of Germany, yet, on the death of that pope, Hildebrand procured the election and consecration of Alexander II., without waiting for any authority.* During this pontificate he was considered as something greater than the pope, who acted entirely by his counsels. On Alexander's decease, Hildebrand, long since the real head of the church, was raised with enthusiasm to its chief dignity, and assumed the name of Gregory VII.

Gregory VII. 1073.

Notwithstanding the late precedent at the election of Alexander II., it appears that Gregory did not yet consider his plans sufficiently mature to throw off the yoke altogether, but declined to receive consecration until he had obtained the consent of the King of Germany.† This moderation was not of long continuance. The situation of Germany speedily afforded him an opportunity of displaying his ambitious views. Henry IV., through a very bad education, was arbitrary and dissolute; the Saxons were engaged in a desperate rebellion; and secret disaffection had spread among the princes to an extent of which the pope was much better aware than the king.‡ He began by excommunicating some of Henry's ministers on pretence of simony, and made it a ground of remonstrance that they were not instantly dismissed. His next step was to publish a decree, or rather to renew one of Alexander II., against lay investitures.§ The abolition of these was a favourite object of Gregory, and formed an essential part of his general scheme for emancipating the spiritual, and subjugating the temporal power. The ring and crosier, it was asserted by the papal advocates, were the emblems of that power which no monarch could bestow; but even if a less offensive symbol were adopted in investitures, the dignity of the church was lowered, and her purity contaminated, when her highest ministers were compelled to solicit the patronage or the approbation of laymen. Though the

His differences with Henry IV.

* St. Marc. Muratori. Schmidt. Struvius.

† St. Marc, t. iii., p. 276. The first canon of the third Lateran council makes the consent of two thirds of the college necessary for a pope's election.—Labbé, Concilia, t. x. p. 1508.

‡ St. Marc, p. 9*

* St. Marc, p. 306.

† Ibid., p. 552. He acted however as pope, corresponding in that character with bishops of all countries, from the day of his election, p. 554.

‡ Schmidt. St. Marc. These two are my principal authorities for the contest between the church and the empire.

§ St. Marc, t. iii., p. 670.

estates of bishops might strictly be of temporal right, yet, as they had been inseparably annexed to their spiritual office, it became just that what was first in dignity and importance should carry with it those accessory parts. And this was more necessary than in former times, on account of the notorious traffic which sovereigns made of their usurped nomination to benefices, so that scarcely any prelate sat by their favour whose possession was not invalidated by simony.

The contest about investitures, though begun by Gregory VII., did not occupy a very prominent place during his pontificate; its interest being suspended by other more extraordinary and important dissensions between the church and empire. The pope, after tampering some time with the disaffected party in Germany, summoned Henry to appear at Rome, and vindicate himself from the charges alleged by his subjects. Such an outrage naturally exasperated a young and passionate monarch. Assembling a number of bishops and other vassals at Worms, he procured a sentence that Gregory should no longer be obeyed as lawful pope. But the time was past for those arbitrary encroachments, or at least high prerogatives of former emperors. The relations of dependence between church and state were now about to be reversed. Gregory had no sooner received accounts of the proceedings at Worms, than he summoned a council in the Lateran palace, and, by a solemn sentence, not only excommunicated Henry, but deprived him of the kingdoms of Germany and Italy, releasing his subjects from their allegiance, and forbidding them to obey him as sovereign. Thus Gregory VII. obtained the glory of leaving all his predecessors behind, and astonishing mankind by an act of audacity and ambition which the most emulous of his successors could hardly surpass.*

The first impulses of Henry's mind on hearing this denunciation were indignation and resentment. But, like other inexperienced and misguided sovereigns, he had formed an erroneous calculation of his own resources. A conspiracy long prepared, of which the dukes of Swabia and Carinthia were the chiefs, began to manifest itself, some were alienated by his vices, and others jealous of his family; the rebellious Saxons took courage; the bishops, intimidated by excommunications, withdrew from his side; and he suddenly found himself almost insulated in the midst of his dominions. In this desertion he had recourse, through panic, to a miserable expedient. He crossed the Alps with the avowed determination of submitting, and seeking absolution from the pope. Gregory was at Canossa, a fortress near Reggio, belonging to his faithful adherent, the Countess Matilda. [A. D. 1077.] It was in a winter of unusual severity. The emperor was admitted, without his guards, into an outer court of the castle, and three successive days remained from morning till evening, in a woollen shirt and with naked feet, while Gregory, shut up with the countess, refused to admit him to his presence. On the fourth day he obtained absolution; but only upon condition of appearing on a certain day to learn the pope's decision, whether or no he should be restored to his kingdom, until which time he promised not to assume the ensigns of royalty.

This base humiliation, instead of conciliating Henry's adversaries, forfeited the attachment of his friends. In his contest with the pope, he had found a zealous support in the principal Lombard cities, among whom the married and simoniacal clergy had great influence.* Indignant

* The sentence of Gregory VII. against the Emperor Henry was directed, we should always remember, to persons already well disposed to reject his authority. Men are glad to be told that it is their duty to resist a sovereign against whom they are in rebellion, and will not be very scrupulous in examining conclusions which fall in with their inclinations and interests. Allegiance was in those turbulent ages easily thrown off, and the right of resistance was in continual exercise. To the Germans of the eleventh century, a prince unfit for Christian communion would easily appear unfit to reign over them; and though Henry had not given much real provocation to the pope, his vices and tyranny might seem to challenge any spiritual censure, or temporal chastisement. A nearly contemporary writer combines the two justifications of the rebellious party. Nemo Romanorum pontificem reges a regno deponere posse denegabit, quicunque decreta sanctissimi Papæ Gregorii non proscribenda judicabit. Ipse enim vir apostolicus .... Præterea, liberi homines Henricum eo pacto sibi præposuerunt in regem, ut electores suos justè judicare et regali providentiâ gubernare satageret, quod pactum ille postea prævaricari et contemnere non cessavit, &c. Ergo, et absque sedis apostolicæ judicio principes eum pro rege meritò refutare possent, cum pactum adimplere contemserit, quod iis pro electione suâ promiserat; quo non adimpleto, nec rex esse poterat.—Vita Greg VII. in Muratori, Script. Rer. Ital., t. iii., p. 342.

Upon the other hand, the friends and supporters of Henry, though ecclesiastics, protested against this novel stretch of prerogative in the Roman see. Several proofs of this are adduced by Schmidt, t. iii., p. 315.

* There had been a kind of civil war at Milan for about twenty years before this time, excited by the intemperate zeal of some partisans who endeavoured to execute the papal decrees against in

at his submission to Gregory, whom they affected to consider as a usurper of the papal chair, they now closed their gates against the emperor, and spoke openly of deposing him. In this singular position between opposite dangers, Henry retrod his late steps, and broke off his treaty with the pope; preferring, if he must fall, to fall as the defender rather than the betrayer of his imperial rights. The rebellious princes of Germany chose another king, Rodolph, duke of Swabia, on whom Gregory, after some delay, bestowed the crown, with a Latin verse, importing that it was given by virtue of the original commission of St. Peter.* But the success of this pontiff in his immediate designs was not answerable to his intrepidity. Henry both subdued the German rebellion, and carried on the war with so much vigour, or rather so little resistance, in Italy, that he was crowned in Rome by the antipope Guibert, whom he had raised in a council of his partisans to the government of the church instead of Gregory. The latter found an asylum under the protection of Roger Guiscard at Salerno, where he died an exile. His mantle, however, descended upon his successors, especially Urban II. and Paschal II., who strenuously persevered in the great contest for ecclesiastical independence; the former with a spirit and policy worthy of Gregory VII., the latter with steady but disinterested prejudice.†

Dispute about investitures.

They raised up enemies against Henry IV. out of the bosom of his family, instigating the ambition of two of his sons successively, Conrad and Henry, to mingle in the revolts of Germany. But Rome, under whose auspices the latter had not scrupled to engage in an almost parricidal rebellion, was soon disappointed by his unexpected tenaciousness of that obnoxious prerogative which had occasioned so much of his father's misery. He steadily refused to part with the right of investiture; and the empire was still committed in open hostility with the church for fifteen years of his reign. But Henry V. being stronger in the support of his German vassals than his father had been, none of the popes with whom he was engaged had the boldness to repeat the measures of Gregory VII. [A D. 1122.] At length, each party grown weary of this ruinous contention, a treaty was agreed upon between the emperor and Calixtus II., which put an end by compromise to the question of ecclesiastical investitures. By this compact, the emperor resigned for ever all pretence to invest bishops by the ring and crosier, and recognised the liberty of elections. But, in return, it was agreed that elections should be made in his presence or that of his officers; and that the new bishop should receive his temporalities from the emperor by the sceptre.*

Compromised by concordat of Calixtus

Both parties in the concordat at Worms receded from so much of their pretensions, that we might almost hesitate to determine which is to be considered as victorious. On the one hand, in restoring the freedom of episcopal elections, the emperors lost a prerogative of very long standing, and almost necessary to the maintenance of authority over not the least turbulent part of their subjects. And though the form of investiture by the ring and crosier seemed in itself of no importance, yet it had been in effect a collateral security against the election of obnoxious persons. For the emperors, detaining this necessary part of the pontificals until they should confer investiture, prevented a hasty consecration of the new bishop, after which, the vacancy being legally filled, it would not be decent for them to withhold the temporalities But then, on the other hand they preserved by the concordat their feudal sovereignty over the estates of the church in defiance of the language which had recently been held by its rulers. Greg

regular clerks by force. The history of these feuds has been written by two contemporaries, Arnulf and Landulf, published in the fourth volume of Muratori's Scriptores Rerum Italicarum; sufficient extracts from which will be found in St. Marc, t. iii., p. 230, &c., and in Muratori's Annals. The Milanese clergy set up a pretence to retain wives, under the authority of their great archbishop, St. Ambrose, who, it seems, has spoken with more indulgence of this practice than most of the fathers. Both Arnulf and Landulf favour the married clerks; and were perhaps themselves of that description.—Muratori.

* Potra dedit Petro, Petrus diadema Rodolpho.

† Paschal II. was so conscientious in his abhorrence of investitures, that he actually signed an agreement with Henry V., in 1110 whereby the prelates were to resign all the lands and other possessions which they held in fief of the emperor, on condition of the latter renouncing the right of investiture which indeed, in such circumstances, would fall of itself. This extraordinary concession, as may be imagined, was not very satisfactory to the cardinals and bishops about Paschal's court, more worldly-minded than himself, nor to those of the emperor's party, whose joint clamours soon put a stop to the treaty.—St. Marc, iv., p. 976. A letter of Paschal to Anselm Schmidt, t. iii., p. 304), seems to imply that he thought it better for the church to be without riches, than to enjoy them on condition of doing homage to laymen.

* St. Marc, t. iv., p. 1093. Schmidt, t. iii. p. 178. The latter quotes the Latin words

ory VII. had positively declared, in the Lateran council of 1080, that a bishop or abbot receiving investiture from a layman should not be reckoned as a prelate.* The same doctrine had been maintained by all his successors, without any limitation of their censures to the formality of the ring and crosier. But Calixtus II. himself had gone much farther, and absolutely prohibited the compelling ecclesiastics to render any service to laymen on account of their benefices.† It is evident, that such a general immunity from feudal obligations for an order who possessed nearly half the lands in Europe, struck at the root of those institutions by which the fabric of society was principally held together. This complete independence had been the aim of Gregory's disciples; and, by yielding to the continuance of lay investitures in any shape, Calixtus may, in this point of view, appear to have relinquished the principal object of contention. But as there have been battles, in which though immediate success may seem pretty equally balanced, yet we learn from subsequent effects to whom the intrinsic advantages of victory belonged, so it is manifest from the events that followed the settlement of this great controversy about investitures, that the see of Rome had conquered.

The emperors were not the only sovereigns whose practice of investiture excited the hostility of Rome, although they sustained the principal brunt of the war. A similar contest broke out under the pontificate of Paschal II. with Henry I. of England; for the circumstances of which, as they contain nothing peculiar, I refer to our own historians. It is remarkable, that it ended in a compromise not unlike that adjusted at Worms; the king renouncing all sort of investitures, while the pope consented that the bishop should do homage for his temporalities. This was exactly the custom of France, where investiture by the ring and crosier is said not to have prevailed;‡ and it answered the main end of sovereigns by keeping up the feudal dependance of ecclesiastical estates. But the kings of Castile were more fortunate than the rest; discreetly yielding to the pride of Rome, they obtained what was essential to their own authority, and have always possessed, by the concession of Urban II., an absolute privilege of nomination to bishoprics in their dominions.* An early evidence of that indifference of the popes towards the real independence of national churches, to which subsequent ages were to lend abundant confirmation.

Introduction of capitular elections.

When the emperors had surrendered their pretensions to interfere in episcopal elections, the primitive mode of collecting the suffrages of clergy and laity in conjunction, or at least of the clergy with the laity's assent and ratification, ought naturally to have revived. But in the twelfth century, neither the people, nor even the general body of the diocesan clergy, were considered as worthy to exercise this function. It soon devolved altogether upon the chapters of cathedral churches.† The original of these may be traced very high. In the earliest ages, we find a college of presbytery consisting of the priests and deacons, assistants as a council of advice, or even a kind of parliament to their bishops. Parochial divisions, and fixed ministers attached to them, were not established till a later period. But the canons, or cathedral clergy, acquired afterward a more distinct character. They were subjected by degrees to certain strict observances, little differing, in fact, from those imposed on monastic orders. They lived at a common table, they slept in a common dormitory, their dress and diet were regulated by peculiar laws. But they were distinguished from monks by the right of possessing individual property, which was afterward extended to the enjoyment of separate preb-

* St. Marc, t. iv., p. 774. A bishop of Placentia asserts that prelates dishonoured their order by putting their hands, which held the body and blood of Christ, between those of impure laymen, p. 956. The same expressions are used by others, and are levelled at the form of feudal homage, which, according to the principles of that age, ought to have been as obnoxious as investiture.

† Id., p. 1061, 1067.

‡ Histoire du Droit public ecclésiastique François, p. 261. I do not fully rely on this authority.

* F. Paul on Benefices, c. 24. Zurita. Anales de Aragon, t. iv., p. 305. Fleury says that the kings of Spain nominate to bishoprics by virtue of a particular indulgence, renewed by the pope for the life of each prince.—Institutions au Droit, t. i., p. 106.

† Fra Paolo (Treatise on Benefices. c. 24) says, that between 1122 and 1145, it became a rule almost everywhere established, that bishops should be chosen by the chapter. Schmidt, however, brings a few instances where the consent of the nobility and other laics is expressed, though perhaps little else than a matter of form. Innocent II. seems to have been the first who declared, that whoever had the majority of the chapter in his favour should be deemed duly elected; and this was confirmed by Otho IV. in the capitulation upon his accession.—Hist. des Allemands t. iv., p. 175 Fleury thinks that chapters had not an exclusive election till the end of the twelfth century. The second Lateran council, in 1139, represses their attempts to engross it.—Institutions au Droit Eccléś., t. i., p. 100.

ends or benefices. These strict regulations, chiefly imposed by Louis the Debonair, went into disuse through the relaxation of discipline; nor were they ever effectually restored. Meantime the chapters became extremely rich; and as they monopolized the privilege of electing bishops, it became an object of ambition with noble families to obtain canonries for their younger children, as the surest road to ecclesiastical honours and opulence. Contrary, therefore, to the general policy of the church, persons of inferior birth have been rigidly excluded from these foundations.*

General conduct of Gregory VII.

The object of Gregory VII., in attempting to redress those more flagrant abuses which for two centuries had deformed the face of the Latin church, is not incapable, perhaps, of vindication, though no sufficient apology can be offered for the means he employed. But the disinterested love of reformation, to which candour might ascribe the contention against investitures, is belied by the general tenour of his conduct, exhibiting an arrogance without parallel, and an ambition that grasped at universal and unlimited monarchy. He may be called the common enemy of all sovereigns, whose dignity as well as independence mortified his infatuated pride. Thus we find him menacing Philip I. of France, who had connived at the pillage of some Italian merchants and pilgrims, not only with an interdict, but a sentence of deposition.† Thus too he asserts, as a known historical fact, that the kingdom of Spain had formerly belonged, by special right, to St. Peter; and by virtue of this imprescriptible claim, he grants to a certain Count de Rouci all territories which he should reconquer from the Moors, to be held in fief from the Holy See by a stipulated rent.‡ A similar pretension he makes to the kingdom of Hungary, and bitterly reproaches its sovereign Solomon, who had done homage to the emperor, in derogation of St. Peter his legitimate lord.* It was convenient to treat this apostle as a great feudal suzerain, and the legal principles of that age were dexterously applied to rivet more forcibly the fetters of superstition.†

While temporal sovereigns were opposing so inadequate a resistance to a system of usurpation contrary to all precedent, and to the common principles of society, it was not to be expected that national churches should persevere in opposing pretensions for which several ages had paved the way. Gregory VII completed the destruction of their liberties. The principles contained in the decretals of Isidore, hostile as they were to ecclesiastical independence, were set aside as insufficient to establish the absolute monarchy of Rome. By a constitution of Alexander II., during whose pontificate Hildebrand himself was deemed the effectual pope, no bishop in the Catholic church was permitted to exercise his functions until he had received the confirmation of the Holy See.‡ a provision of vast importance, through which beyond perhaps any other means, Rome has sustained, and still sustains, her temporal influence, as well as her ecclesiastical supremacy. The national churches long abridged of their liberties by gradual encroachments, now found themselves subject to an undisguised and irresistible despotism. Instead of affording protection to bishops against their metropolitans, under an insidious pretence of which the popes of the ninth century had subverted the authority of the latter, it became the favourite policy of their successors to harass all prelates with citations to Rome.§ Gregory obliged the metropolitans to attend in person for the pallium.‖ Bishops were summoned even from England and the northern kingdoms to receive the commands of the spiritual monarch William the Conqueror having made a

* Schmidt, t. ii., p. 224, 473; t. iii., p. 281. Encyclopédie, Art. Chanoine. F. Paul on Benefices, c. 16. Fleury, 8me Discours sur l'Hist. Ecclés.

† St. Marc, t. iii., p. 628. Fleury, Hist. Ecclés., t. xiii., p. 281, 284.

‡ The language he employs is worth quoting, as a specimen of his style: Non latere vos credimus, regnum Hispaniæ ab antiquo juris sancti Petri fuisse, et adhuc licet diu a paganis sit occupatum, lege tamen justitiæ non evacuatâ, nulli mortalium, sed soli apostolicæ sedi ex æquo pertinere. Quod enim auctore Deo semel in proprietates ecclesiarum justè pervenerit, manente Eo, ab usu quidem, sed ab earum jure, occasione transeuntis temporis, sine legitimâ concessione divelli non poterit. Itaque Comes Evalus de Roceio, cujus famam apud vos haud obscuram esse putamus, terram illam ad honorem Sti. Petri ingredi, et a paganorum manibus eripere cupiens, hanc concessionem ab apostolicâ sede obtinuit, ut partem illam, unde paganos suo studio et adjuncto sibi aliorum auxilio expellere possit, sub conditione inter nos factæ pactionis ex parte Sti. Petri possideret.—Labbé, Concilia, t. x. p. 10. Three instances occur in the Corps Diplomatique of Dumont, where a duke of Dalmatia (t. i., p. 53), a count of Provence (p. 58), and a count of Barcelona (ibid.), put themselves under the feudal superiority and protection of Gregory VII. The motive was sufficiently obvious.

* St. Marc, t. iii., p 624, 674. Schmidt, p. 73.

† The character and policy of Gregory VII. are well discussed by Schmidt, t. iii., p 307.

‡ St. Marc, p. 460.

§ Schmidt, t. iii., p. 80, 322.

‖ Id., t. iv., p. 170

difficulty about permitting his prelates to obey these citations, Gregory, though in general on good terms with that prince, and treating him with a deference which marks the effect of a firm character in repressing the ebullitions of overbearing pride,* complains of this as a persecution unheard of among pagans.† The great quarrel between Archbishop Anselm and his two sovereigns, William Rufus and Henry I., was originally founded upon a similar refusal to permit his departure for Rome.

Authority of papal legates.

This perpetual control exercised by the popes over ecclesiastical, and, in some degree, over temporal affairs, was maintained by means of their legates, at once the ambassadors and the lieutenants of the Holy See. Previously to the latter part of the tenth age, these had been sent not frequently and upon special occasions. The legatine or vicarial commission had generally been intrusted to some eminent metropolitan of the nation within which it was to be exercised; as the Archbishop of Canterbury was perpetual legate in England. But the special commissioners, or legates a latere, suspending the pope's ordinary vicars, took upon themselves an unbounded authority over the national churches, holding councils, promulgating canons, deposing bishops, and issuing interdicts at their discretion. They lived in splendour at the expense of the bishops of the province. This was the more galling to the hierarchy, because simple deacons were often invested with this dignity, which set them above primates. As the sovereigns of France and England acquired more courage, they considerably abridged this prerogative of the Holy See, and resisted the entrance of any legates into their dominions without their consent.‡

From the time of Gregory VII., no pontiff thought of awaiting the confirmation of the emperor, as in earlier ages, before he was installed in the throne of St. Peter. On the contrary, it was pretended that the emperor was himself to be confirmed by the pope. This had indeed been broached by John VIII. two hundred years before Gregory.§ It was still a doctrine not calculated for general reception but the popes availed themselves of every opportunity which the temporizing policy the negligence, or bigotry of sovereigns threw into their hands. Lothaire coming to receive the imperial crown at Rome, this circumstance was commemorated by a picture in the Lateran palace, in which, and in two Latin verses subscribed, he was represented as doing homage to the pope.* When Frederick Barbarossa came upon the same occasion, he omitted to hold the stirrup of Adrian IV., who, in his turn, refused to give him the usual kiss of peace; nor was the contest ended but by the emperor's acquiescence, who was content to follow the precedents of his predecessors. The same Adrian, expostulating with Frederick upon some slight grievance, reminded him of the imperial crown which he had conferred, and declared his willingness to bestow, if possible, still greater benefits. But the phrase employed (majora beneficia) suggested the idea of a fief; and the general insolence which pervaded Adrian's letter confirming this interpretation, a ferment arose among the German princes, in a congress of whom this letter was delivered. "From whom then," one of the legates was rash enough to say, "does the emperor hold his crown, except from the pope?" which so irritated a prince of Wittelsbach, that he was with difficulty prevented from cleaving the priest's head with his sabre.† Adrian IV. was the only Englishman that ever sat in the papal chair. It might, perhaps, pass for a favour bestowed on his natural sovereign, when he granted to Henry II. the kingdom of Ireland: yet the language of this donation, wherein he asserts all islands to be the exclusive property of St. Peter, should not have had a very pleasing sound to an insular monarch.

Adrian IV.

I shall not wait to comment on the sup-

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* St. Marc, p. 628, 781. Schmidt, t. iii., p. 82.

† Idem, t. iv., p. 768. Collier, p. 252.

‡ De Marca, l. vi., c. 28, 30, 31. Schmidt, t. ii., p. 498 iii., p. 312, 320. Hist. du Droit Public Eccl. Francois, p. 250. Fleury, 4me Discours sur l'Hist. Eccles., c. 10.

§ Vide supra. It appears manifest, that the scheme of temporal sovereignty was only suspended by the disorders of the Roman see in the tenth century. Peter Damian, a celebrated writer of the age of Hildebrand, and his friend, puts these words into the mouth of Jesus Christ, as addressed to Pope Victor II. Ego claves totius universalis ecclesiæ meæ tuis manibus tradidi, et super eam te mihi vicarium posui, quam proprii sanguinis effusione redemi. Et si pauca sunt ista, etiam monarchias addidi: immo sublato rege de medio totius Romani imperii vacantis tibi jura permisi.—Schmidt, t. iii., p. 78.

* Rex venit ante fores, jurans prius urbis honores:
Post homo fit papæ, sumit quo dante coronam.
Muratori, Annali, A. D. 1157.

There was a pretext for this artful line. Lothaire had received the estate of Matilda in fief, from the pope, with a reversion to Henry the Proud, his son-in-law.—Schmidt, p. 349.

† Vide supra. Schmidt, t. iii. p. 393

Innocent III.

port given to Becket by Alexander III. [A. D. 1194–1216], which must be familiar to the English reader, nor on his speedy canonization; a reward which the church has always held out to its most active friends, and which may be compared to titles of nobility granted by a temporal sovereign.* But the epoch when the spirit of papal usurpation was most strikingly displayed was the pontificate of Innocent III. In each of the three leading objects which Rome has pursued, independent sovereignty, supremacy over the Christian church, control over the princes of the earth, it was the fortune of this pontiff to conquer. He realized, as we have seen in another place, that fond hope of so many of his predecessors, a dominion over Rome and the central parts of Italy. During his pontificate, Constantinople was taken by the Latins; and, however he might seem to regret a diversion of the crusaders, which impeded the recovery of the Holy Land, he exulted in the obedience of the new patriarch, and the reunion of the Greek church. Never, perhaps, either before or since, was the great eastern schism in so fair a way of being healed; even the kings of Bulgaria and of Armenia acknowledged the supremacy of Innocent, and permitted his interference with their ecclesiastical institutions.

His extraordinary pretensions.

The maxims of Gregory VII. were now matured by more than a hundred years, and the right of trampling upon the necks of kings had been received, at least among churchmen, as an inherent attribute of the papacy. "As the sun and the moon are placed in the firmament" (such is the language of Innocent), "the greater as the light of the day, and the lesser of the night; thus are there two powers in the church; the pontifical, which, as having the charge of souls, is the greater; and the royal, which is the less, and to which the bodies of men only are intrusted."† Intoxicated with these conceptions (if we may apply such a word to *successful* ambition), he thought no quarrel of princes beyond the sphere of his jurisdiction. "Though I cannot judge of the right to a fief," said Innocent to the kings of France and England, "yet it is my province to judge where sin is committed, and my duty to prevent all public scandals." Philip Augustus, who had at that time the worse in his war with Richard, acquiesced in this sophism; the latter was more refractory, till the papal legate began to menace him with the rigour of the church.* But the King of England, as well as his adversary, condescended to obtain temporary ends by an impolitic submission to Rome. We have a letter from Innocent to the King of Navarre, directing him, on pain of spiritual censure, to restore some castles which he detained from Richard.† And the latter appears to have entertained hopes of recovering his ransom paid to the emperor and Duke of Austria, through the pope's interference.‡ By such blind sacrifices of the greater to the less, of the future to the present, the sovereigns of Europe played continually into the hands of their subtle enemy.

Though I am not aware that any pope before Innocent III. had thus announced himself as the general arbiter of differences and conservator of the peace throughout Christendom, yet the scheme had been already formed, and the public mind was in some degree prepared to admit it. Gerohus, a writer who lived early in the twelfth century, published a theory of perpetual pacification, as feasible certainly as some that have been planned in later times. All disputes among princes were to be referred to the pope. If either party refused to obey the sentence of Rome, he was to be excommunicated and deposed. Every Christian sovereign was to attack the refractory delinquent under pain of a similar forfeiture.§ A project of this nature had not only a magnificence flattering to the ambition of the church, but was calculated to impose upon benevolent minds, sickened by the cupidity and oppression of princes.

* The first instance of a solemn papal canonization is that of St. Udalric by John XV., in 993. However, the metropolitans continued to meddle with this sort of apotheosis till the pontificate of Alexander III., who reserved it, as a choice prerogative, to the Holy See.—Art de vérifier les Dates, t. i., p. 247 and 290.

† Vita Innocentii Tertii in Muratori, Scriptores Rerum Ital., t. iii., pars i., p. 488. This life is written by a contemporary.—St. Marc, t. v., p. 325. Schmidt, t. iv., p. 227.

* Philippus rex Franciæ in manu ejus datâ fide promisit se ad mandatum ipsius pacem vel treugas cum rege Angliæ initurum. Richardus autem rex Angliæ se difficilem ostendebat. Sed cum idem legatus ei *cepit rigorem ecclesiasticum intentare*, saniori ductus consilio acquievit.—Vita Innocentii Tertii, t. iii., pars i., p. 503.

† Innocentii Opera (Coloniæ 1574), p. 124.

‡ Id., p. 134. Innocent actually wrote some letters for this purpose, but without any effect, nor was he probably at all solicitous about it.—P. 139 and 141. Nor had he interfered to procure Richard's release from prison: though Eleanor wrote him a letter, in which she asks, "Has not God given you the power to govern nations and kings?"—Velly, Hist. de France, t. iii., p. 382

§ Schmidt, t. iv., p. 232.

No control but that of religion appeared sufficient to restrain the abuses of society; while its salutary influence had already been displayed both in the Truce of God, which put the first check on the custom of private war, and more recently in the protection afforded to crusaders against all aggression during the continuance of their engagement. But reasonings from the excesses of liberty in favour of arbitrary government, or from the calamities of national wars in favour of universal monarchy, involve the tacit fallacy, that perfect, or at least superior, wisdom and virtue will be found in the restraining power. The experience of Europe was not such as to authorize so candid an expectation in behalf of the Roman see.

There were certainly some instances, where the temporal supremacy of Innocent III., however usurped, may appear to have been exerted beneficially. He directs one of his legates to compel the observance of peace between the kings of Castile and Portugal, if necessary, by excommunication and interdict.* He enjoins the King of Aragon to restore his coin which he had lately debased, and of which great complaint had arisen in his kingdom.† Nor do I question his sincerity in these, or in many other cases of interference with civil government. A great mind, such as Innocent III. undoubtedly possessed, though prone to sacrifice every other object to ambition, can never be indifferent to the beauty of social order, and the happiness of mankind. But, if we may judge by the correspondence of this remarkable person, his foremost gratification was the display of unbounded power. His letters, especially to ecclesiastics, are full of unprovoked rudeness. As impetuous as Gregory VII., he is unwilling to owe any thing to favour; he seems to anticipate denial, heats himself into anger as he proceeds, and where he commences with solicitation, seldom concludes without a menace.‡ An extensive learning in ecclesiastical law, a close observation of whatever was passing in the world, an unwearied diligence, sustained his fearless ambition.§ With such a temper, and with such advantages, he was formidable beyond all his predecessors, and perhaps beyond all his successors. On every side the thunder of Rome broke over the heads of princes. A certain Swero is excommunicated for usurping the crown of Norway. A legate, in passing through Hungary, is detained by the king: Innocent writes in tolerably mild terms to this potentate, but fails not to intimate that he might be compelled to prevent his son's succession to the throne. The King of Leon had married his cousin, a princess of Castile. Innocent subjects the kingdom to an interdict. When the clergy of Leon petition him to remove it, because, when they ceased to perform their functions, the laity paid no tithes, and listened to heretical teachers when orthodox mouths were mute, he consented that divine service with closed doors, but not the rites of burial, might be performed.* The king at length gave way and sent back his wife. But a more illustrious victory of the same kind was obtained over Philip Augustus, who, having repudiated Isemburga of Denmark had contracted another marriage. The conduct of the king, though not without the usual excuse of those times, nearness of blood, was justly condemned and Innocent did not hesitate to visit his sins upon the people by a general interdict. This, after a short demur from some bishops, was enforced throughout France; the dead lay unburied, and the living were cut off from the offices of religion, till Philip, thus subdued, took back his divorced wife. The submission of such a prince, not feebly superstitious like his predecessor Robert, nor vexed with seditions like the Emperor Henry IV., but brave, firm, and victorious, is perhaps the proudest trophy in the scutcheon of Rome. Compared with this, the subsequent triumph of Innocent over our pusillanimous John seems cheaply gained, though the surrender of a powerful kingdom into the vassalage of the pope may strike us as a proof of

* Innocent. Opera. p. 146. † P. 378.

‡ Idem, p. 31, 73, 76, &c. &c.

§ The following instance may illustrate the character of this pope, and his spirit of governing the whole world, as much as those of a more public nature. He writes to the chapter of Pisa, that one Rubeus, a citizen of that place, had complained to him, that having mortgaged a house and garden for two hundred and fifty-two pounds, on condition that he might redeem it before a fixed day, within which time he had been unavoidably prevented from raising the money, the creditor had now refused to accept it; and directs them to inquire into the facts, and if they prove truly stated, to compel the creditor by spiritual censures to restore the premises, reckoning their rent during the time of the mortgage as part of the debt, and to receive the remainder.—Id., t. ii., p. 17. It must be admitted, that Innocent III. discouraged in general those vexatious and dilatory appeals from inferior ecclesiastical tribunals to the court of Rome which had gained ground before his time, and especially in the pontificate of Alexander III.

* Innocent. Opera, t. ii., p. 411. Vita Innocent III.

stupendous baseness on one side, and audacity on the other.* Yet, under this very pontificate, it was not unparalleled. Peter II., king of Aragon, received at Rome the belt of knighthood and the royal crown from the hands of Innocent III.; he took an oath of perpetual fealty and obedience to him and his successors; he surrendered his kingdom, and accepted it again, to be held by an annual tribute, in return for the protection of the apostolic see.† This strange conversion of kingdoms into spiritual fiefs was intended as the price of security from ambitious neighbours, and may be deemed analogous to the change of allodial into feudal, or, more strictly, to that of lay into ecclesiastical tenure, which was frequent during the turbulence of the darker ages.

I have mentioned already, that among the new pretensions advanced by the Roman see was that of confirming the election of an emperor. It had, however, been asserted rather incidentally than in a peremptory manner. But the doubtful elections of Philip and Otho, after the death of Henry VI., gave Innocent III. an opportunity of maintaining more positively this pretended right. In a decretal epistle addressed to the Duke of Zahringen, the object of which is to direct him to transfer his allegiance from Philip to the other competitor, Innocent, after stating the mode in which a regular election ought to be made, declares the pope's immediate authority to examine, confirm, anoint, crown, and consecrate the elect emperor, provided he shall be worthy; or to reject him if rendered unfit by great crimes, such as sacrilege, heresy, perjury, or persecution of the church; in default of election, to supply the vacancy; or, in the event of equal suffrages, to bestow the empire upon any person at his discretion.‡ The princes of Germany were not much influenced by this hardy assumption, which manifests the temper of Innocent III. and of his court rather than their power. But Otho IV., at his coronation by the pope, signed a capitulation, which cut off several privileges enjoyed by the emperors, even since the concordat of Calixtus, in respect of episcopal elections and investitures.*

Papal authority in the thirteenth century.

The noonday of papal dominion extends from the pontificate of Innocent III. inclusively to that of Boniface VIII.; or, in other words, through the thirteenth century. Rome inspired during this age all the terror of her ancient name. She was once more the mistress of the world, and kings were her vassals. I have already anticipated the two most conspicuous instances when her temporal ambition displayed itself, both of which are inseparable from the civil history of Italy.† In the first of these, her long contention with the house of Swabia, she finally triumphed. After his deposition by the council of Lyons, the affairs of Frederick II. went rapidly into decay. With every allowance for the enmity of the Lombards, and the jealousies of Germany, it must be confessed that the proscription of Innocent IV. and Alexander IV. was the main cause of the ruin of his family. There is, however, no other instance, to the best of my judgment, where the pretended right of deposing kings has been successfully exercised. Martin IV. absolved the subjects of Peter of Aragon from their allegiance, and transferred his crown to a prince of France; but they did not cease to obey their lawful sovereign. This is the second instance which the thirteenth century presents of interference on the part of the popes in a great temporal quarrel. As feudal lords of Naples and Sicily, they had indeed some pretext for engaging in the hostilities between the houses of Anjou and Aragon, as well as for their contest with Frederick II. But the pontiffs of that age, improving upon the system of Innocent III., and sanguine with past success, aspired to ren-

* The stipulated annual payment of 1000 marks was seldom made by the kings of England; but one is almost ashamed that it should ever have been so. Henry III. paid it occasionally, when he had any object to attain, and even Edward I. for some years: the latest payment on record is in the seventeenth of his reign. After a long discontinuance, it was demanded in the fortieth of Edward III. (A. D. 1366), but the parliament unanimously declared that John had no right to subject the kingdom to a superior without their consent; which put an end for ever to the applications.—Prynne's Constitutions, vol. iii.

† Zurita, Anales de Aragon, t. i., f. 91. This was not forgotten towards the latter part of the same century, when Peter III. was engaged in the Sicilian war, and served as a pretence for the pope's sentence of deprivation.

‡ Decretal., l. i., tit. 6, c. 34, commonly cited Venerabilem. The rubric or synopsis of this epistle asserts the pope's right electum imperatorem examinare, approbare, et inungere, consecrare et coronare, si est dignus; vel rejicere si est indignus ut quia sacrilegus, excommunicatus, tyrannus, fautus et hæreticus, paganus, perjurus, vel ecclesiæ persecutor. Et electoribus nolentibus eligere, Papa supplet. Et data paritate vocum eligentium, nec accedente majore concordiâ, Papa potest gratificari cui vult. The epistle itself is, if possible more strongly expressed.

* Schmidt, t. iv., p. 148, 175

† See above, chapter ii

der every European kingdom formally dependant upon the See of Rome. Thus Boniface VIII., at the instigation of some emissaries from Scotland, claimed that monarchy as paramount lord, and interposed, though vainly, the sacred panoply of ecclesiastical rights to rescue it from the arms of Edward I.*

Canon law

This general supremacy effected by the Roman church over mankind in the twelfth and thirteenth centuries, derived material support from the promulgation of the canon law. The foundation of this jurisprudence is laid in the decrees of councils, and in the rescripts or decretal epistles of popes to questions propounded upon emergent doubts relative to matters of discipline and ecclesiastical economy. As the jurisdiction of the spiritual tribunals increased, and extended to a variety of persons and causes, it became almost necessary to establish a uniform system for the regulation of their decisions. After several minor compilations had appeared, Gratian, an Italian monk, published, about the year 1140, his Decretum, or general collection of canons, papal epistles, and sentences of fathers, arranged and digested into titles and chapters, in imitation of the Pandects, which very little before had begun to be studied again with great diligence. This work of Gratian, though it seems rather an extraordinary performance for the age when it appeared, has been censured for notorious incorrectness as well as inconsistency, and especially for the authority given in it to the false decretals of Isidore, and consequently to the papal supremacy. It fell, however, short of what was required in the progress of that usurpation. Gregory IX. caused the five books of Decretals to be published by Raimond de Pennafort in 1234. These consist almost entirely of rescripts issued by the later popes, especially Alexander III., Innocent III., Honorius III., and Gregory himself. They form the most essential part of the canon law, the Decretum of Gratian being comparatively obsolete. In these books we find a regular and copious system of jurisprudence, derived in a great measure from the civil law, but with considerable deviation, and possibly improvement. Boniface VIII. added a sixth part, thence called the Sext, itself divided into five books, in the nature of a supplement to the other five, of which it follows the arrangement, and composed of decisions promulgated since the pontificate of Gregory IX. New constitutions were subjoined by Clement V. and John XXII., under the name of Clementines and Extravagantes Joannis; and a few more of later pontiffs are included in the body of canon law, arranged as a second supplement after the manner of the Sext, and called Extravagantes Communes.

The study of this code became of course obligatory upon ecclesiastical judges. It produced a new class of legal practitioners, or canonists; of whom a great number added, like their brethren the civilians, their illustrations and commentaries, for which the obscurity and discordance of many passages, more especially in the Decretum, gave ample scope. From the general analogy of the canon law to that of Justinian, the two systems became, in a remarkable manner, collateral and mutually intertwined, the tribunals governed by either of them borrowing their rules of decision from the other in cases where their peculiar jurisprudence is silent or of dubious interpretation.* But the canon law was almost entirely founded upon the legislative authority of the pope; the decretals are in fact but a new arrangement of the bold epistles of the most usurping pontiffs, and especially of Innocent III., with titles or rubrics, comprehending the substance of each in the compiler's language. The superiority of ecclesiastical to temporal power, or at least the absolute independence of the former, may be considered as a sort of key-note which regulates every passage in the canon law.† It is expressly declared, that subjects owe no allegiance to an excommunicated lord, if after admonition he is not reconciled to the church.‡ And the rubric prefixed to the declaration of Frederick II.'s deposition in the council of Lyons asserts that the pope may dethrone the emperor for lawful causes.§ These ru

* Dalrymple's Annals of Scotland, vol. i., p. 267

* Duck, De Usu Juris Civilis, l. i., c. 8.

† Constitutiones principum ecclesiasticis constitutionibus non præeminent, sed obsequuntur.—Decretum, distinct. 10. Statutum generale laicorum ad ecclesias vel ad ecclesiasticas personas, vel eorum bona in earum præjudicium non extenditur.—Decretal., l. i., tit. 2, c. 10. Quæcunque à principibus in ordinibus vel in ecclesiasticis rebus decreta inveniuntur, nullius auctoritatis esse monstrantur.—Decretum, distinct. 96.

‡ Domino excommunicato manente, subditi fidelitatem non debent; et si longo tempore in eâ perstiterint, et monitus non pareat ecclesiæ, a ejus debito absolvuntur.—Decretal., l. v., tit. 37, c. 13. I must acknowledge, that the decretal epistle of Honorius III. scarcely warrants this general proposition of the rubric, though it seems to lead to it

§ Papa imperatorem deponere potest ex causis legitimis, l. ii., tit. 13, c. 2

brics to the decretals are not perhaps of direct authority as part of the law; but they express its sense, so as to be fairly cited instead of it.* By means of her new jurisprudence, Rome acquired in every country a powerful body of advocates, who, though many of them were laymen, would, with the usual bigotry of lawyers, defend every pretension or abuse to which their received standard of authority gave sanction.†

Mendicant orders.

Next to the canon law, I should reckon on the institution of the mendicant orders among those circumstances which principally contributed to the aggrandizement of Rome. By the acquisition, and in some respects the enjoyment, or at least ostentation of immense riches, the ancient monastic orders had forfeited much of the public esteem.‡ Austere principles as to the obligation of evangelical poverty were inculcated by the numerous sectaries of that age, and eagerly received by the people, already much alienated from an established hierarchy. No means appeared so efficacious to counteract this effect, as the institution of religious societies, strictly debarred from the insidious temptations of wealth. Upon this principle were founded the orders of Mendicant Friars, incapable, by the rules of their foundation, of possessing estates, and maintained only by alms and pious remunerations. Of these the two most celebrated were formed by St. Dominic and St. Francis of Assisa, and established by the authority of Honorius III. in 1216 and 1223. These great reformers, who have produced so extraordinary an effect upon mankind, were of very different characters; the one, active and ferocious had taken a prominent part in the crusade against the unfortunate Albigeois, and was among the first who bore the terrible name of inquisitor; while the other, a harmless enthusiast, pious and sincere, but hardly of sane mind, was much rather accessary to the intellectual than to the moral degradation of his species. Various other mendicant orders were instituted in the thirteenth century; but most of them were soon suppressed, and besides the two principal, none remain but the Augustin and the Carmelites.*

These new preachers were received with astonishing approbation by the laity, whose religious zeal usually depends a good deal upon their opinion of sincerity and disinterestedness in their pastors. And the progress of the Dominican and Franciscan friars in the thirteenth century bears a remarkable analogy to that of our English Methodists. Not deviating from the faith of the church, but professing rather to teach it in greater purity, and to observe her ordinances with greater regularity, while they imputed supineness and corruption to the secular clergy, they drew round their sermons a multitude of such listeners as in all ages are attracted by similar means. They practised all the stratagems of itinerancy, preaching in public streets, and administering the communion on a portable altar. Thirty years after their institution, an historian complains that the parish churches were deserted; that none confessed except to these friars; in short, that the regular discipline was subverted.† This uncontrolled privilege of performing sacerdotal functions, which their modern antitypes assume for themselves, was conceded to the mendicant orders by the favour of Rome. Aware of the powerful support they might receive in turn, the pontiffs of the thirteenth century accumulated benefits upon the disciples of Francis and Dominic. They were exempted from episcopal authority; they were permitted to preach or hear confessions without leave of the ordinary,‡ to accept of legacies, and to inter in their churches. Such privileges could not be

* If I understand a bull of Gregory XIII., prefixed to his recension of the canon law, he confirms the rubrics or glosses along with the text; but I cannot speak with certainty as to his meaning.

† For the canon law, I have consulted, besides the Corpus Juris Canonici, Tiraboschi, Storia della Litteratura, t. iv. and v.; Giannone, l. xiv., c. 3; l. xix., c. 3; l. xxii., c. 8. Fleury, Institutions au Droit Ecclésiastique, t. i., p. 10, and 5me Discours sur l'Histoire Ecclés. Duck, De Usu Juris Civilis, l. i., c. 8. Schmidt, t. iv., p. 39. F. Paul, Treatise of Benefices, c. 31. I fear that my few citations from the canon law are not made scientifically; the proper mode of reference is to the first word; but the book and title are rather more convenient; and there are not many readers in England who will detect this impropriety.

‡ It would be easy to bring evidence from the writings of every successive century to the general viciousness of the regular clergy, whose memory it is sometimes the fashion to treat with respect. See particularly Muratori, Dissert. 65, and Fleury, 3me Discours. The latter observes that their great wealth was the cause of this relaxation in discipline

* Mosheim's Ecclesiastical History. Fleury, 8me Discours. Crevier, Histoire de l'Université de Paris, t. i., p. 318.

† Matt. Paris, p. 607.

‡ Another reason for preferring the friars is given by Archbishop Peckham; quoniam casus episcopales reservati episcopis ab homine, vel a jure communiter a Deum timentibus episcopis ipsis fratribus committuntur, et non presbyteris, *quorum simplicitas non sufficit aliis dirigendis*.—Wilkins, Concilia, t. ii., p. 169.

granted without resistance from the other clergy; the bishops remonstrated, the university of Paris maintained a strenuous opposition; but their reluctance served only to protract the final decision. Boniface VIII. appears to have peremptorily established the privileges and immunities of the mendicant orders in 1295.*

It was naturally to be expected that the objects of such extensive favours would repay their benefactors by a more than usual obsequiousness and alacrity in their service. Accordingly, the Dominicans and Franciscans vied with each other in magnifying the papal supremacy. Many of these monks became eminent in canon law and scholastic theology. The great lawgiver of the schools, Thomas Aquinas, whose opinions the Dominicans especially treat as almost infallible, went into the exaggerated principles of his age in favour of the see of Rome.† And as the professors of those sciences took nearly all the learning and logic of the times to their own share, it was hardly possible to repel their arguments by any direct reasoning. But this partiality of the new monastic orders to the popes must chiefly be understood to apply to the thirteenth century, circumstances occurring in the next which gave in some degree a different complexion to their dispositions in respect of the Holy See.

Papal dispensations of marriage.

We should not overlook, among the causes that contributed to the dominion of the popes, their prerogative of dispensing with ecclesiastical ordinances. The most remarkable exercise of this was as to the canonical impediments of matrimony. Such strictness as is prescribed by the Christian religion with respect to divorce was very unpalatable to the barbarous nations. They, in fact, paid it little regard; under the Merovingian dynasty, even private men put away their wives at pleasure. In many capitularies of Charlemagne, we find evidence of the prevailing license of repudiation and even polygamy.* The principles which the church inculcated were in appearance the very reverse of this laxity; yet they led indirectly to the same effect. Marriages were forbidden, not merely within the limits which nature, or those inveterate associations which we call nature, have rendered sacred, but as far as the seventh degree of collateral consanguinity, computed from a common ancestor.† Not only was affinity, or relationship by marriage, put upon the same footing as that by blood, but a fantastical connexion, called spiritual affinity, was invented, in order to prohibit marriage between a sponsor and godchild. A union, however innocently contracted, between parties thus circumstanced, might at any time be dissolved, and their subsequent cohabitation forbidden; though their children, I believe, in cases where there had been no knowledge of the impediment, were not illegitimate. One readily apprehends the facilities of abuse to which all this led; and history is full of dissolutions of marriage, obtained by fickle passion or cold-hearted ambition, to which the church has not scrupled to pander on some suggestion of relationship. It is so difficult to conceive, I do not say any reasoning, but any honest superstition, which could have produced those monstrous regulations, that I was at first inclined to suppose them designed to give by a side wind, that facility of divorce which a licentious people demanded, but

* Crevier, Hist. de l'Université de Paris, t. i. et t. ii., passim. Fleury, ubi supra. Hist. du Droit Ecclésiastique François, t. i., p. 394, 396, 446. Dobie' Ecclesiastical History, vol. i., p. 437, 448 452. Wood's Antiquities of Oxford, vol. i., p. 376, 480 (Gutch's edition).

† It was maintained by the enemies of the mendicants, especially William St. Amour, that the pope could not give them a privilege to preach or perform the other duties of the parish priests. Thomas Aquinas answered, that a bishop might perform any spiritual functions within his diocess, or commit the charge to another instead, and that the pope being to the whole church what a bishop is to his diocess, might do the same everywhere.—Crevier, t. i., p. 474.

† Marculfi Formulæ, l. ii., c 30

* Although a man might not marry again when his wife had taken the veil, he was permitted to do so if she was infected with the leprosy. Compare Capitularia Pippini, A. D. 752 and 755. If a woman conspired to murder her husband, he might remarry.—Idem, A. D. 753. A large proportion of Pepin's laws relate to incestuous connexions and divorces. One of Charlemagne seems to imply that polygamy was not unknown even among priests. Si sacerdotes plures uxores habuerint, sacerdotio priventur; quia sæcularibus deteriores sunt.—Capitul., A. D. 769. This seems to imply that their marriage with one was allowable, which nevertheless is contradicted by other passages in the Capitularies.

† See the canonical computation explained in St. Marc, t. iii., p. 376. Also in Blackstone's Law Tracts, Treatise on Consanguinity. In the eleventh century, an opinion began to gain ground in Italy that third cousins might marry, being in the seventh degree according to the civil law. Peter Damian, a passionate abetter of Hildebrand and his maxims, treats this with horror, and calls it a heresy.—Fleury, t. xiii., p. 152. St. Marc, ubi supra. This opinion was supported by a reference to the Institutes of Justinian; a proof, among several others, how much earlier that book was known than is vulgarly supposed.

the church could not avowedly grant. This refinement would however be unsupported by facts. The prohibition is very ancient, and was really derived from the ascetic temper which introduced so many other absurdities.* It was not until the twelfth century that either this or any other established rules of discipline were supposed liable to arbitrary dispensation; at least the stricter churchmen had always denied that the pope could infringe canons, nor had he asserted any right to do so.† But Innocent III. laid down as a maxim, that out of the plenitude of his power he might lawfully dispense with the law; and accordingly granted, among other instances of this prerogative, dispensations from impediments of marriage to the Emperor Otho IV.‡ Similar indulgences were given by his successors, though they did not become usual for some ages. The fourth Lateran Council, in 1215, removed a great part of the restraint, by permitting marriages beyond the fourth degree, or what we call third cousins;§ and dispensations have been made more easy, when it was discovered that they might be converted into a source of profit. They served a more important purpose by rendering it necessary for the princes of Europe, who seldom could marry into one another's houses without transgressing the canonical limits, to keep on good terms with the court of Rome, which, in several instances that have been mentioned, fulminated its censures against sovereigns who lived without permission in what was considered an incestuous union.

Dispensations from promissory oaths.

The dispensing power of the popes was exerted in several cases of a temporal nature, particularly in the legitimation of children, for purposes even of succession. This Innocent III. claimed as an indirect consequence of his right to remove the canonical impediment which bastardy offered to ordination, since it would be monstrous, he says, that one who is legitimate for spiritual functions should continue otherwise in any civil matter.* But the most important and mischievous species of dispensations, was from the observance of promissory oaths. Two principles are laid down in the decretals; that an oath disadvantageous to the church is not binding; and that one extorted by force was of slight obligation, and might be annulled by ecclesiastical authority.† As the first of these maxims gave the most unlimited privilege to the popes of breaking all faith of treaties which thwarted their interest or passion, a privilege which they continually exercised,‡ so the second was equally convenient to princes, weary of observing engagements towards their subjects or their neighbours. They reclaimed with a bad grace against the absolution of their people from allegiance by an authority to which they did not scruple to repair in order to bolster up their own perjuries.

* Gregory I. pronounces matrimony to be unlawful as far as the seventh degree; and even, if I understand his meaning, as long as any relationship could be traced; which seems to have been the maxim of strict theologians, though not absolutely enforced.—Du Cange, v. Generatio. Fleury, Hist. Ecclés., t. ix., p. 211.

† De Marca, l. iii., cc. 7, 8, 14. Schmidt, t. iv., p. 235. Dispensations were originally granted only as to canonical penances, but not prospectively to authorize a breach of discipline. Gratian asserts that the pope is not bound by the canons; in which, Fleury observes, he goes beyond the False Decretals.—Septième Discours, p. 291.

‡ Secundùm plenitudinem potestatis de jure possumus supra jus dispensare.—Schmidt, t. iv., p. 238

§ Fleury, Institutions au Droit Ecclésiastique, t. i., p. 296

* Decretal., l. iv., tit. 17, c. 13.

† Juramentum contra utilitatem ecclesiasticam præstitum non tenet—Decretal., l. ii., tit. 24, c. 27, et Sext., l. i., tit. 11, c. 1. A juramento per metum extorto ecclesia solet absolvere, et ejus transgressores ut peccantes mortaliter non punientur.—Eodem lib. et tit., c. 15. The whole of this title in the decretals upon oaths seems to have given the first opening to the lax casuistry of succeeding times.

‡ Take one instance out of many. Piccinino, the famous condottiere of the fifteenth century, had promised not to attack Francis Sforza, at that time engaged against the pope. Eugenius IV. (the same excellent person who had annulled the compactata with the Hussites, releasing those who had sworn to them, and who afterward made the King of Hungary break his treaty with Amurath II.), absolves him from this promise, on the express ground that a treaty disadvantageous to the church ought not to be kept.—Sismondi, t. ix., p. 196. The church, in that age, was synonymous with the papal territories in Italy.

It was in conformity to this sweeping principle of ecclesiastical utility, that Urban VI. made the following solemn and general declaration against keeping faith with heretics. Attendentes quod hujusmodi confœderationes, colligationes, et ligæ seu conventiones factæ cum hujusmodi hæreticis seu schismaticis postquam tales effecti erant, sunt temerariæ; illicitæ, et ipso jure nullæ (etsi forte ante ipsorum lapsum in schisma, seu hæresin initæ, seu factæ fuissent), etiam si forent juramento vel fide datâ firmatæ, aut confirmatione apostolicâ vel quâcunque firmitate aliâ roboratæ, postquam tales, ut præmittitur, sunt effecti.—Rymer, t. vii., p. 352.

It was of little consequence that all divines and sound interpreters of canon law maintain that the pope cannot dispense with the divine or moral law, as De Marca tells us, l. iii., c. 15, though he admits that others of less sound judgment assert the contrary; as was common enough, I believe, among the Jesuits at the beginning of the seventeenth century. His power of interpreting the law was of itself a privilege of dispensing with it.

Thus Edward I., the strenuous asserter of his temporal rights, and one of the first who opposed a barrier to the encroachments of the clergy, sought at the hands of Clement V. a dispensation from his oath to observe the great statute against arbitrary taxation.

In all the earlier stages of papal dominion, the supreme head of the church had been her guardian and protector; and this beneficent character appeared to receive its consummation in the result of that arduous struggle which restored the ancient practice of free election to ecclesiastical dignities. Not long however after this triumph had been obtained, the popes began by little and little to interfere with the regular constitution. Their first step was conformable indeed to the prevailing system of spiritual independence. By the concordat of Calixtus, it appears that the decision of contested elections was reserved to the emperor, assisted by the metropolitans and suffragans. In a few cases during the twelfth century, this imperial prerogative was exercised, though not altogether undisputed.* But it was consonant to the prejudices of that age to deem the supreme pontiff a more natural judge, as in other cases of appeal. The point was early settled in England, where a doubtful election to the archbishopric of York, under Stephen, was referred to Rome, and there kept five years in litigation.† Otho IV. surrendered this among other rights of the empire to Innocent III. by his capitulation;‡ and from that pontificate the papal jurisdiction over such controversies became thoroughly recognised. But the real aim of Innocent, and perhaps of some of his predecessors, was to dispose of bishoprics, under pretext of determining contests, as a matter of patronage. So many rules were established, so many formalities required by their constitutions, incorporated afterward into the canon law, that the court of Rome might easily find means of annulling what had been done by the chapter and bestowing the see on a favourite candidate.* The popes soon assumed not only a right of decision, but of devolution; that is, of supplying the want of election, or the unfitness of the elected, by a nomination of their own.† Thus Archbishop Langton, if not absolutely nominated, was at least chosen in an invalid and compulsory manner, by the order of Innocent III.; as we may read in our English historians. And several succeeding archbishops of Canterbury equally owed their promotion to the papal prerogative. Some instances of the same kind occurred in Germany, and it became the constant practice in Naples.‡

Encroachments of popes on the freedom of elections.

And on rights of patronage.

While the popes were thus artfully depriving the chapters of their right of election to bishoprics, they interfered in a more arbitrary manner with the collation of inferior benefices. This began, though in so insensible a manner as to deserve no notice but for its consequences, with Adrian IV., who requested some bishops to confer the next benefice that should become vacant on a particular clerk.◊ Alexander III. used to solicit similar favours.‖ These recommendatory letters were called mandats. But though such requests grew more frequent than was acceptable to patrons, they were preferred in moderate language, and could not decently be refused to the apostolic chair. Even Innocent III. seems in general to be aware that he is not asserting a right; though in one instance I have observed his violent temper break out against the chapter of Poitiers, who had made some demur to the appointment of his clerk, and whom he threatens with excommunication and interdict.¶ But, as we find in the history of all usurping governments, time changes anomaly into system, and injury into right; examples beget custom, and custom ripens into law; and the doubtful precedent of one generation becomes the fundamental maxim of another. Honorius

Mandats.

* Schmidt, t. iii., p. 299; t. iv., p. 149. According to the concordat, elections ought to be made in the presence of the emperor or his officers; but the chapters contrived to exclude them by degrees, though not perhaps till the thirteenth century.—Compare Schmidt, t. iii., p. 296; t. iv., p. 146.

† Henry's Hist. of England, vol. v., p. 324. Lyttleton's Henry II., vol. i., p. 356.

‡ Schmidt, t. iv., p. 149. One of these was the *spolium*, or moveable estate of a bishop, which the emperor was used to seize upon his decease, p. 154. It was certainly a very *leonine* prerogative; but the popes did not fail at a subsequent time to claim it for themselves.—Fleury, Institutions au Droit, t. i., p. 425. Lenfant, Concile de Constance, t. ii., p. 130.

* F. Paul, c. 30. Schmidt, t. iv., p. 177, 247.

† Thus we find it expressed, as captiously as words could be devised, in the decretals, l. i., tit. 6, c. 22. Electus a majori et saniori parte capituli, si est, et erat idoneus tempore electionis, confirmabitur: si autem erit indignus in ordinibus scientiâ vel ætate, et fuit scienter electus, electus a minori parte, si est dignus, confirmabitur.

A person canonically disqualified when presented to the pope for confirmation was said to be *postulatus*, not *electus*.

‡ Giannone, l. xiv., c. 6; l. xix. 5.

◊ St. Marc, t. v., p. 41. Art de vérifier les Dates, t. i., p. 288. Encyclopédie, Art. Mandats.

‖ Schmidt, t. iv., p. 239.

¶ Innocent III., Opera, p. 502.

III requested that two prebends in every church might be preserved for the Holy See; but neither the bishops of France nor England, to whom he preferred this petition, were induced to comply with it.* Gregory IX. pretended to act generously in limiting himself to a single expectative, or letter directing a particular clerk to be provided with a benefice in every church.† But his practice went much farther. No country was so intolerably treated by this pope and his successors as England, throughout the ignominious reign of Henry III. Her church seemed to have been so richly endowed only as the free pasture of Italian priests, who were placed, by the mandatory letters of Gregory IX. and Innocent IV., in all the best benefices. If we may trust a solemn remonstrance in the name of the whole nation, they drew from England, in the middle of the thirteenth century, sixty or seventy thousand marks every year; a sum far exceeding the royal revenue.‡ This was asserted by the English envoys at the council of Lyons. But the remedy was not to be sought in remonstrances to the court of Rome, which exulted in the success of its encroachments. There was no defect of spirit in the nation to oppose a more adequate resistance; but the individual upon the throne sacrificed the public interest sometimes through habitual timidity, sometimes through silly ambition. If England, however, suffered more remarkably, yet other countries were far from being untouched. A German writer, about the beginning of the fourteenth century, mentions a cathedral where, out of about thirty-five vacancies of prebends that had occurred within twenty years, the regular patron had filled only two.§ The case was not very different in France, where the continual usurpations of the popes are said to have produced the celebrated Pragmatic Sanction of St. Louis. This edict, which is not of undisputed authority, contains three important provisions; namely, that all prelates and other patrons shall enjoy their full rights as to the collation of benefices, according to the canons; that churches shall possess freely their rights of election; and that no tax or pecuniary exaction shall be levied by the pope, without consent of the king and of the national church.‖ We do not find, however, that the French government acted up to the spirit of this ordinance, if it be genuine; and the Holy See continued to invade the rights of collation with less ceremony than they had hitherto used. Clement IV. published a bull in 1266, which, after asserting an absolute prerogative of the supreme pontiff to dispose of all preferments, whether vacant or in reversion, confines itself in the enacting words to the reservation of such benefices as belong to persons dying at Rome (vacantes in curiâ).* These had for some time been reckoned as a part of the pope's special patronage; and their number, when all causes of importance were drawn to his tribunal, when metropolitans were compelled to seek their pallium in person, and even by a recent constitution, exempt abbots to repair to Rome for confirmation,† not to mention the multitude who flocked thither as mere courtiers and hunters after promotion, must have been very considerable. Boniface VIII. repeated this law of Clement IV. in a still more positive tone;‡ and Clement V. laid down as a maxim, that the pope might freely bestow, as universal patron, all ecclesiastical benefices.§ In order to render these tenable by their Italian courtiers, the canons against pluralities and nonresidence were dispensed with; so that individuals were said to have accumulated fifty or sixty preferments.‖ It was a consequence from this extravagant principle, that the pope might prevent the ordinary collator upon a vacancy; and as this could seldom be done with sufficient expedition in places remote from his court, that he might make reversionary grants during the life of an incumbent,

Provisions, reserves, &c.

* Matt. Paris, p. 267. De Marca, l. iv. c. 9.
† F. Paul on Benefices, c. 30.
‡ M. Paris, p. 579, 740.
§ Schmidt, t. vi., p. 104.
‖ Ordonnances des Rois de France, t. i. p. 97.

There are several material objections to the authenticity of this edict, and in particular that we do not find the king to have had any previous differences with the see of Rome; on the contrary, he was just indebted to Clement IV. for bestowing the crown of Naples on his brother, the Count of Provence. Velly has defended it, Hist. de France, t. vi., p. 57, and in the opinion of the learned Benedictine editors of L'Art de vérifier les Dates, t. i., p. 585, cleared up all difficulties as to its genuineness. In fact, however, the Pragmatic Sanction of St. Louis stands by itself, and can only be considered as a protestation against abuses which it was still impossible to suppress.

* Sext. Decretal., l. iii., t. iv., c. 2. F. Paul on Benefices, c. 35. This writer thinks the privilege of nominating benefices vacant *in curiâ* to have been among the first claimed by the popes, even before the usage of mandats, c. 30.
† Matt. Paris, p. 817.
‡ Sext. Decretal., l. iii., t. iv., c. 3. He extended the vacancy in curiâ to all places within two days' journey of the papal court.
§ F. Paul, c. 35.
‖ Id., c. 33, 34, 35. Schmidt, t. iv., p. 104.

or reserve certain benefices specifically for his own nomination

Papal taxation of the clergy

The persons as well as estates of ecclesiastics were secure from arbitrary taxation in all the kingdoms founded upon the ruins of the empire, both by the common liberties of freemen, and more particularly by their own immunities and the horror of sacrilege.* Such at least was their legal security, whatever violence might occasionally be practised by tyrannical princes. But this exemption was compensated by annual donatives, probably to a large amount, which the bishops and monasteries were accustomed, and as it were compelled, to make to their sovereigns.† They were subject also, generally speaking, to the feudal services and prestations. Henry I. is said to have extorted a sum of money from the English church.‡ But the first eminent instance of a general tax required from the clergy was the famous Saladine tithe; a tenth of all moveable estate, imposed by the kings of France and England upon all their subjects, with the consent of their great councils of prelates and barons, to defray the expense of their intended crusade. Yet even this contribution, though called for by the imminent peril of the Holy Land after the capture of Jerusalem, was not paid without reluctance, the clergy doubtless anticipating the future extension of such a precedent.◊ Many years had not elapsed when a new demand was made upon them, but from a different quarter. Innocent III. (the name continually recurs when we trace the commencement of a usurpation) imposed, in 1199, upon the whole church, a tribute of one fortieth of moveable estate, to be paid to his own collectors; but strictly pledging himself that the money should only be applied to the purposes of a crusade.‖ This crusade ended, as is well known, in the capture of Constantinople. But the word had lost much of its original meaning; or rather that meaning had been extended by ambition and bigotry. Gregory IX. preached a crusade against the Emperor Frederick, in a quarrel which only concerned his temporal principality; and the church of England was taxed by his authority to carry on this holy war.¶ After some opposition the bishops submitted; and from that time no bounds were set to the rapacity of papal exactions. The usurers of Cahors and Lombardy, residing in London, took up the trade of agency for the pope; and in a few years he is said, partly by levies of money, partly by the revenues of benefices, to have plundered the kingdom of 950,000 marks; a sum equivalent, I think, to not less than fifteen millions sterling at present. Innocent IV., during whose pontificate the tyranny of Rome, if we consider her temporal and spiritual usurpations together, reached perhaps its zenith, hit upon the device of ordering the English prelates to furnish a certain number of men-at-arms to defend the church at their expense. This would soon have been commuted into a standing escuage instead of military service.* But the demand was perhaps not complied with, and we do not find it repeated. Henry III.'s pusillanimity would not permit any effectual measure to be adopted; and indeed he sometimes shared in the booty, and was indulged with the produce of taxes imposed upon his own clergy to defray the cost of his projected war against Sicily.† A nobler example was set by the kingdom of Scotland: Clement IV. having, in 1267, granted the tithes of its ecclesiastical revenues for one of his mock crusades, King Alexander III., with the concurrence of the church, stood up against this encroachment, and refused the legate permission to enter his dominions.‡ Tax-

* Muratori Dissert. 70. Schmidt, t. iii., p. 211.
† Id., Ibid. Du Cange, v. Dona.
‡ Eadmer, p. 83.
◊ Schmidt, t. iv., p. 212. Lyttleton's Henry II., vol. iii., p. 472. Velly, t. iii., p. 316
‖ Innocent. Opera, p. 266.
¶ M. Paris, p 470. It was hardly possible for the clergy to make any effective resistance to the pope, without unravelling a tissue which they had been assiduously weaving. One English prelate distinguished himself in this reign by his strenuous protestation against all abuses of the church This was Robert Grosstete, bishop of Lincoln, who died in 1253, the most learned Englishman of his time, and the first who had any tincture of Greek literature. Matthew Paris gives him a high character, which he deserved for his learning and integrity; one of his commendations is for keeping a good table. But Grosstete appears to have been imbued in a great degree with the spirit of his age as to ecclesiastical power, though unwilling to yield it up to the pope: and it is a strange thing to reckon him among the precursors of the Reformation.—M. Paris, p. 754. Berington's Literary History of the Middle Ages, p 378.

* M. Paris, p. 613. It would be endless to multiply proofs from Matthew Paris, which indeed occur in almost every page. His laudable zeal against papal tyranny, on which some Protestant writers have been so pleased to dwell, was a little stimulated by personal feelings for the abbey of St Alban's; and the same remark is probably applicable to his love of civil liberty.

† Rymer, t. i., p. 599, &c. The substance of English ecclesiastical history during the reign of Henry III. may be collected from Henry, and still better from Collier.

‡ Dalrymple's Annals of Scotland, vol. i. p 177

ation of the clergy was not so outrageous in other countries; but the popes granted a tithe of benefices to St Louis for each of his own crusades, and also for the expedition of Charles of Anjou against Manfred.* In the council of Lyons, held by Gregory X. in 1274, a general tax of the same proportion was imposed on all the Latin church, for the pretended purpose of carrying on a holy war.†

Disaffection towards the court of Rome.

These gross invasions of ecclesiastical property, however submissively endured, produced a very general disaffection towards the court of Rome. The reproach of venality and avarice was not indeed cast for the first time upon the sovereign pontiffs; but it had been confined in earlier ages to particular instances, not affecting the bulk of the Catholic church. But, pillaged upon every slight pretence, without law and without redress, the clergy came to regard their once paternal monarch as an arbitrary oppressor. All writers of the thirteenth and following centuries complain in terms of unmeasured indignation, and seem almost ready to reform the general abuses of the church. They distinguished, however, clearly enough between the abuses which oppressed them and those which it was their interest to preserve, nor had the least intention of waiving their own immunities and authority. But the laity came to more universal conclusions. A spirit of inveterate hatred grew up among them, not only towards the papal tyranny, but the whole system of ecclesiastical independence. The rich envied and longed to plunder the estates of the superior clergy; the poor learned from the Waldenses and other sectaries to deem such opulence incompatible with the character of evangelical ministers. The itinerant minstrels invented tales to satirise vicious priests, which a predisposed multitude eagerly swallowed. If the thirteenth century was an age of more extravagant ecclesiastical pretensions than any which had preceded, it was certainly one in which the disposition to resist them acquired great consistence.

Progress of ecclesiastical jurisdiction.

To resist had indeed become strictly necessary, if the temporal governments of Christendom would occupy any better station than that of officers to the hierarchy. I have traced already the first stage of that ecclesiastical jurisdiction, which through the partial indulgence of sovereigns, especially Justinian and Charlemagne, had become nearly independent of the civil magistrate. Several ages of confusion and anarchy ensued, during which the supreme regal authority was literally suspended in France, and no much respected in some other countries. It is natural to suppose that ecclesiastical jurisdiction, so far as even that was regarded in such barbarous times, would be esteemed the only substitute for coercive law, and the best security against wrong. But I am not aware that it extended itself beyond its former limits till about the beginning of the twelfth century. From that time it rapidly encroached upon the secular tribunals, and seemed to threaten the usurpation of an exclusive supremacy over all persons and causes. The bishops gave the tonsure indiscriminately, in order to swell the list of their subjects. This sign of a clerical state, though below the lowest of their seven degrees of ordination, implying no spiritual office, conferred the privileges and immunities of the profession on all who wore an ecclesiastical habit, and had only once been married.* Orphans and widows, the stranger and the poor, the pilgrim and the leper, under the appellation of persons in distress (miserabiles personæ), came within the peculiar cognizance and protection of the church; nor could they be sued before any lay tribunal. And the whole body of crusaders, or such as merely took the vow of engaging in a crusade, enjoyed the same clerical privileges.

But where the character of the litigant parties could not, even with this large construction, be brought within their pale, the bishops found a pretext for their jurisdiction in the nature of the dispute. Spiritual causes alone, it was agreed, could appertain to the spiritual tribunal. But the word was indefinite; and according to the interpreters of the twelfth century, the church was always bound to prevent and chastise the commission of sin. By this sweeping maxim, which we have

* Velly, t. iv p. 343; t. v., p. 343; t. vi., p. 47.
† Idem, t. vi p. 308. St. Marc, t. vi., p. 347

* Clerici qui cum uxoribus et virginibus contraxerunt, si tonsuram et vestes deferant clericales, privilegium retineant —— præsenti declaramus edicto, hujusmodi clericos conjugatos pro commissis ab iis excessibus vel delictis, trahi non posse criminaliter aut civiliter ad judicium sæculare.—Bonifacius Octavus, in Sext. Decretal., l. iii., tit. ii., c. 1. Philip the Bold, however, had subjected these married clerks to taxes, and later ordinances of the French kings rendered them amenable to temporal jurisdiction; from which, in Naples, by various provisions of the Angevin line, they always were free —Giannone l. xix. c. 5

seen Innocent III. apply to vindicate his control over national quarrels, the common differences of individuals, which generally involve some charge of wilful injury, fell into the hands of a religious judge. One is almost surprised to find that it did not extend more universally, and might praise the moderation of the church. Real actions, or suits relating to the property of land, were always the exclusive province of the lay court, even where a clerk was the defendant.* But the ecclesiastical tribunals took cognizance of breaches of contract, at least where an oath had been pledged, and of personal trusts.† They had not only an exclusive jurisdiction over questions immediately matrimonial, but a concurrent one with the civil magistrate in France, though never in England, over matters incident to the nuptial contract, as claims of marriage portion and of dower.‡ They took the execution of testaments into their hands, on account of the legacies to pious uses which testators were advised to bequeath.§ In process of time, and under favourable circumstances, they made still greater strides. They pretended a right to supply the defects, the doubts, or the negligence of temporal judges; and invented a class of mixed causes, whereof the lay or ecclesiastical jurisdiction took possession according to priority. Besides this extensive authority in civil disputes, they judged of some offences, which naturally belong to the criminal law, as well as of some others, which participate of a civil and criminal nature. Such were perjury, sacrilege, usury, incest, and adultery;‖ from the punishment of all which the secular magistrate refrained, at least in England, after they had become the province of a separate jurisdiction. Excommunication still continued the only chastisement which the church could directly inflict. But the bishops acquired a right of having their own prisons for lay offenders,* and the monasteries were the appropriate prisons of clerks. Their sentences of excommunication were enforced by the temporal magistrate by imprisonment or sequestration of effects; in some cases by confiscation or death.†

The clergy did not forget to secure along with this jurisdiction their own absolute exemption from the criminal justice of the state. This, as I have above mentioned, had been conceded to them by Charlemagne; but how far the same privilege existed in countries not subject to his empire, such as England, or even in France and Germany during the three centuries after his reign, is what I am not able to assert. The False Decretals contain some passages in favour of ecclesiastical immunity, which Gratian repeats in his collection.‡ About the middle of the twelfth century the principle obtained general reception, and Innocent III. decided it to be an inalienable right of the clergy whereof they could not be divested even by their own consent.§ Much less were any constitutions of princes, or national usages, deemed of force to abrogate such an important privilege.‖ These, by the canon law, were invalid when they affected the rights and liberties of holy church.¶ But the spiritual courts were charged with scandalously neglecting to visit the most atrocious offences of clerks with

Ecclesiastical immunity.

* Decretal., l. ii., t. ii. Ordonnances des Rois, t. i., p. 40 (A. D. 1189). In the council of Lambeth, in 1261, the bishops claim a right to judge inter clericos suos, vel inter laicos conquerentes et clericos defendentes, in personalibus actionibus super contractibus, aut delictis, aut quasi, i. e. quasi delictis.—Wilkins, Concilia, t. i., p. 747.

† Ordonnances des Rois, p. 319 (A. D. 1290).

‡ Idem, p. 40, 121, 220, 319.

§ Id., p. 319. Glanvil, l. vii., c. 7. Sancho IV. gave the same jurisdiction to the clergy of Castile. Teoria de las Cortes, t. iii., p. 20; and in other respects followed the example of his father Alfonso X. in favouring their encroachments. The church of Scotland seems to have had nearly the same jurisdiction as that of England.—Pinkerton's History of Scotland, vol. i., p. 173.

‖ It was a maxim of the canon, as well as the common law, that no person should be punished twice for the same offence; therefore, if a clerk had been degraded, or a penance imposed on a layman, it was supposed unjust to proceed against him in a temporal court.

* Charlemagne is said by Giannone to have permitted the bishops to have prisons of their own, l. vi., c. 7.

† Giannone, l. xix., c. 5, t. iii. Schmidt, t. iv., p. 195; t. vi., p. 125. Fleury, 7me Discours, Mém. de l'Acad. des Inscript., t. xxxix., p. 603. Ecclesiastical jurisdiction not having been uniform in different ages and countries, it is difficult, without much attention, to distinguish its general and permanent attributes from those less completely established. Its description, as given in the Decretals, lib. ii., tit. ii., De foro competenti, does not support the pretensions made by the canonists, nor come up to the sweeping definition of ecclesiastical jurisdiction by Boniface VIII. in the Sext., l. iii., tit. xxiii., c. 40, sive ambæ partes hoc voluerint, sive una super causis ecclesiasticis, sive quæ ad forum ecclesiasticum ratione personarum, negotiorum, vel rerum de jure vel de antiquâ consuetudine pertinere noscuntur.

‡ Fleury, 7me Discours.

§ Idem. Institutions au Droit Ecclés., t. ii., p. 8.

‖ In criminalibus causis in nullo casu possunt clerici ab aliquo quàm ab ecclesiastico judice condemnari, etiamsi consuetudo regia habeat ut fures a judicibus sæcularibus judicentur. Decretal., l. i., tit. i., c. 8.

¶ Decret., distinct. 96.

such punishment as they could inflict. The church could always absolve from her own censures; and confinement in a monastery, the usual sentence upon criminals, was frequently slight and temporary. Several instances are mentioned of heinous outrages that remained nearly unpunished through the shield of ecclesiastical privilege.* And as the temporal courts refused their assistance to a rival jurisdiction, the clergy had no redress for their own injuries, and even the murder of a priest at one time, as we are told, was only punishable by excommunication.†

Endeavours made to repress it in England.

Such an incoherent medley of laws and magistrates, upon the symmetrical arrangement of which all social economy mainly depends, could not fail to produce a violent collision. Every sovereign was interested in vindicating the authority of the constitutions which had been formed by his ancestors, or by the people whom he governed. But the first who undertook this arduous work, the first who appeared openly against ecclesiastical tyranny, was our Henry II. The Anglo-Saxon church, not so much connected as some others with Rome, and enjoying a sort of barbarian immunity from the thraldom of canonical discipline, though rich, and highly respected by a devout nation, had never, perhaps, desired the thorough independence upon secular jurisdiction at which the continental hierarchy aimed. William the Conqueror first separated the ecclesiastical from the civil tribunal, and forbade the bishops to judge of spiritual causes in the hundred court.‡ His language is, however, too indefinite to warrant any decisive proposition as to the nature of such causes; probably they had not yet been carried much beyond their legitimate extent. Of clerical exemption from the secular arm, we find no earlier notice than in the coronation oath of Stephen, which, though vaguely expressed, may be construed to include it.* But I am not certain that the law of England had unequivocally recognised that claim at the time of the constitutions of Clarendon. It was at least an innovation, which the legislature might without scruple or transgression of justice abolish. Henry II., in that famous statute, attempted in three respects to limit the jurisdiction assumed by the church; asserting for his own judges the cognizance of contracts, however confirmed by oath, and of rights of advowson, and also that of offences committed by clerks, whom, as it is gently expressed, after conviction or confession the church ought not to protect.† These constitutions were the leading subject of difference between the king and Thomas Becket. Most of them were annulled by the pope, as derogatory to ecclesiastical liberty. It is not improbable, however, that if Louis VII. had played a more dignified part, the See of Rome, which an existing schism rendered dependant upon the favour of those two monarchs, might have receded in some measure from her pretensions. But France implicitly giving way to the encroachments of ecclesiastical power, it became impossible for Henry completely to withstand them.

The constitutions of Clarendon, however, produced some effect, and, in the reign of Henry III., more unremitted and successful efforts began to be made to maintain the independence of temporal government. The judges of the king's court had until that time been themselves principally ecclesiastics, and consequently tender of spiritual privileges.‡ But now, abstaining from the exercise of temporal jurisdiction, in obedience to the strict injunctions of their canons,§ the clergy gave place to common lawyers, professors of a system very discordant from their own. These soon began to

* Collier, vol. i., p. 351. It is laid down in the canon laws that a layman cannot be a witness in a criminal case against a clerk.—Decretal., l. ii., tit. xx., c. 14.

† Lyttleton's Henry II., vol. iii., p. 332. This must be restricted to that period of open hostility between the church and state.

‡ Ut nullus episcopus vel archidiaconus de legibus episcopalibus amplius in Hundret placita teneant, nec causam quæ ad regimen animarum pertinet, ad judicium sæcularium hominum adducant.—Wilkins, Leges Anglo-Saxon., 230.

Before the conquest, the bishop and earl sat together in the court of the county or hundred; and, as we may infer from the tenour of this charter, ecclesiastical matters were decided loosely, and rather by the common law than according to the canons. This practice had been already forbidden by some canons enacted under Edgar, id., p. 83; but apparently with little effect. The separation of the civil and ecclesiastical tribunals was not made in Denmark till the reign of Nicolas, who ascended the throne in 1105.—Langebek, Script. Rer. Danic., t. iv., p. 380. Others refer the law to St. Canut, about 1080, t. ii., p. 209.

* Ecclesiasticarum personarum et omnium cleri corum, et rerum eorum justitiam et potestatem, e distributionem honorum ecclesiasticorum, in manu episcoporum esse perhibeo, et confirmo.—Wilkins, Leges Anglo-Saxon., p. 310.

† Wilkins, Leges Anglo-Saxon., p. 323. Lyttleton's Henry II., Collier, &c.

‡ Dugdale's Origines Juridicales, c. 8.

§ Decretal., l. i., tit. xxxvii., c. 1. Wilkins, Concilia, t. ii. p. 4.

assert the supremacy of their jurisdiction by issuing writs of prohibition, whenever the ecclesiastical tribunals passed the boundaries which approved use had established.* Little accustomed to such control, the proud hierarchy chafed under the bit; several provincial synods reclaim against the pretensions of laymen to judge the anointed ministers, whom they were bound to obey;† the cognizance of rights of patronage and breaches of contract is boldly asserted;‡ but firm and cautious, favoured by the nobility, though not much by the king, the judges receded not a step, and ultimately fixed a barrier which the church was forced to respect.◊ In the ensuing reign of Edward I., an archbishop acknowledges the abstract right of the king's bench to issue prohibitions;‖ and the statute entitled Circumspectè agatis, in the thirteenth year of that prince, while by its mode of expression it seems designed to guaranty the actual privileges of spiritual jurisdiction, had a tendency, especially with the disposition of the judges, to preclude the assertion of some which are not therein mentioned. Neither the right of advowson nor any temporal contract is specified in this act as pertaining to the church; and accordingly the temporal courts have ever since maintained an undisputed jurisdiction over them.¶ They succeeded also partially in preventing the impunity of crimes perpetrated by clerks. It was enacted by the statute of Westminster, in 1275, or rather a construction was put upon that act, which is obscurely worded, that clerks endicted for felony should not be delivered to their ordinary until an inquest had been taken of the matter of accusation; and if they were found guilty, that their real and personal estate should be forfeited to the crown. In later times, the clerical privilege was not allowed till the party had pleaded to the endictment, and been duly convict, as is the practice at present.*

Less vigorous in France.

The civil magistrates of France did not by any means exert themselves so vigorously for their emancipation. The same, or rather worse usurpations existed, and the same complaints were made, under Philip Augustus, St. Louis, and Philip the Bold; but the laws of those sovereigns tend much more to confirm than to restrain ecclesiastical encroachments.† Some limitations were attempted by the secular courts; and an historian gives us the terms of a confederacy among the French nobles, in 1246, binding themselves by oath not to permit the spiritual judges to take cognizance of any matter, except heresy, marriage, and usury.‡ Unfortunately, Louis IX. was almost as little disposed as Henry III. to shake off the yoke of ecclesiastical dominion. But other sovereigns in the same period, from various motives, were equally submissive. Frederick II. explicitly adopts the exemption of clerks from criminal as

* Prynne has produced several extracts from the pipe rolls of Henry II., where a person has been fined quia placitavit de laico feodo in curiâ christianitatis. And a bishop of Durham is fined five hundred marks quia tenuit placitum *de advocatione cujusdam. ecclesiæ* in curiâ christianitatis.—Epistle dedicatory to Prynne's Records, vol. iii. Glanvil gives the form of a writ of prohibition to the spiritual court for inquiring de feodo laico; for it had jurisdiction over lands in frankalmoign. This is conformable to the constitutions of Clarendon, and shows that they were still in force; though Collier has the assurance to say, that they were repealed soon after Becket's death, supporting this also by a false quotation from Glanvil.—Ecclesiast. Hist., vol. i., p. 380. Lyttleton's Henry II., vol. iii., p. 97.

† Cum judicandi Christos domini nulla sit laicis attributa potestas, apud quos manet necessitas obsequendi.—Wilkins, Concilia, t. i., p. 747.

‡ Id. ibid.; et t. ii., p. 90.

◊ Vide Wilkins, Concilia, t. ii., passim.

‖ Licet prohibitiones hujusmodi a curiâ christiani simi regis nostri justè proculdubio, ut diximus, concedantur.—Idem, t. ii., p. 100, and p. 115. Yet after such an acknowledgment by Archbishop Peckham, in the height of ecclesiastical power, and after a practice deducible from the age of Henry II., some Protestants, as Archbishop Bancroft (2 Inst., 609); Gibson (preface to Codex Jur. Eccl.); Collier (Ecclesiast. Hist., vol. i., p. 522), have complained that the court of king's bench should put any limits to their claims of spiritual jurisdiction.

¶ The statute Circumspectè agatis, for it is acknowledged as a statute, though not drawn up in the form of one, is founded upon an answer of Edward I. to the prelates who had petitioned for some modification of prohibitions. Collier, always prone to exaggerate church authority, insinuates that the jurisdiction of the spiritual court over breaches of contract, even without oath, is preserved by this statute; but the express words of the king show that none whatever was intended; and the archbishop complains bitterly of it afterward.—Wilkins, Concilia, t. ii., p. 118. Collier's Ecclesiast. History, vol. i., p. 487. So far from having any cognizance of civil contracts not confirmed by oath, to which I am not certain that the church ever pretended in any country, the spiritual court had no jurisdiction at all even where an oath had intervened, unless there was a deficiency of proof by writing or witnesses.—Glanvil, l. x., c. 12. Constitut. Clarendon., art. 15.

* 2 Inst., p. 163.

† It seems deducible from a law of Philip Augustus, Ordonnances des Rois, t. i., p. 39, that a clerk convicted of some heinous offences might be capitally punished after degradation; yet a subsequent ordinance, p. 43, renders this doubtful; and the theory of clerical immunity became afterward more fully established.

Matt. Paris, p. 6[illegible]

well as civil jurisdiction of seculars.* And Alfonso X. introduced the same system in Castile; a kingdom where neither the papal authority nor the independence of the church had obtained any legal recognition until the promulgation of his code, which teems with all the principles of the canon law.† It is almost needless to mention that all ecclesiastical powers and privileges were incorporated with the jurisprudence of the kingdom of Naples, which, especially after the accession of the Angevin line, stood in a peculiar relation of dependance upon the Holy See.‡

Restraints on alienations in mortmain.

The vast acquisitions of landed wealth made for many ages by bishops, chapters, and monasteries, began at length to excite the jealousy of sovereigns. They perceived that, although the prelates might send their stipulated proportion of vassals into the field, yet there could not be that active co-operation which the spirit of feudal tenures required, and that the national arm was palsied by the diminution of military nobles. Again, the reliefs upon succession, and similar dues upon alienation, incidental to fiefs, were entirely lost when they came into the hands of these undying corporations, to the serious injury of the feudal superior. Nor could it escape reflecting men, during the contest about investitures, that, if the church peremptorily denied the supremacy of the state over her temporal wealth, it was but a just measure of retaliation, or rather self-defence, that the state should restrain her further acquisitions. Prohibitions of gifts in mortmain, though unknown to the lavish devotion of the new kingdoms, had been established by some of the Roman emperors, to check the overgrown wealth of the hierarchy.* The first attempt at a limitation of this description in modern times was made by Frederick Barbarossa, who, in 1158, enacted that no fief should be transferred either to the church or otherwise, without the permission of the superior lord. Louis IX. inserted a provision of the same kind in his establishments.† Castile had also laws of a similar tendency.‡ A license from the crown is said to have been necessary in England before the conquest for alienations in mortmain; but, however that may be, there seems no reason to imagine that any restraint was put upon them by the common law before Magna Charta; a clause of which statute was construed to prohibit all gifts to religious houses without the consent of the lord of the fee. And by the 7th Edward I., alienations in mortmain are absolutely taken away; though the king might always exercise his prerogative of granting a license, which was not supposed to be effected by the statute.§

Boniface VIII.

It must appear, I think, to every careful inquirer, that the papal authority, though manifesting outwardly more show of strength every year, had been secretly undermined, and lost a great deal of its hold upon public opinion, before the accession of Boniface VIII., in 1294, to the pontifical throne. The clergy were rendered sullen by demands of money, invasions of the legal right of patronage, and unreasonable partiality to the mendicant orders; a part of the mendicants themselves had begun to declaim against the corruptions of the papal court; while the laity, subjects alike and sovereigns, looked upon both the head and the members of the hierarchy with jealousy and dislike. Boniface, full of inordinate arrogance and ambition, and not sufficiently sensible of this gradual change in human opinion, endeavoured to strain to a higher pitch the despotic pretensions of former pontiffs. As Gregory VII. appears the most usurping of mankind till we read the history of Innocent III., so Innocent III. is thrown into shade by the superior audacity of Boniface VIII. But independently of the less favourable dispositions of the public, he wanted the most essential quality for an ambitious pope, reputation for integri

* Statuimus, ut nullus ecclesiasticam personam, in criminali quæstione vel civili, trahere ad judicium sæculare præsumat.—Ordonnances des Rois de France, t. i., p. 611, where this edict is recited and approved by Louis Hutin. Philip the Bold had obtained leave from the pope to arrest clerks accused of heinous crimes, on condition of remitting them to the bishop's court for trial.—Hist. du Droit. Eccl. Franç., t. i., p. 426. A council at Bourges, held in 1276, had so absolutely condemned all interference of the secular power with clerks, that the king was obliged to solicit this moderate favour, p. 421.

† Marina, Ensayo Historico-Critico sobre las siete partidas, c. 320, &c. Hist. du Droit Ecclés. Franç., t. i., p. 442.

‡ Giannone, l. xix., c. v.; l. xx., c. 8. One provision of Robert, king of Naples, is remarkable: it extends the immunity of clerks to their *concubines*. —Ibid.

Villani strongly censures a law made at Florence, in 1345, taking away the personal immunity of clerks in criminal cases. Though the state could make such a law, he says, it had no right to do so against the liberties of holy church! xii., c. 43.

* Giannone, l. iii.

† Ordonnances des Rois, p. 213. See too p. 303 and alibi. Du Cange, v. Manus morta. *Amortissiment*, in Denisart, and other French law-books Fleury, Instit. au Droit., t. i., p. 350.

‡ Marina, Ensayo sobre las siete partidas, c 236

§ 2 Inst., p 74. Blackstone vol. ii., c. 18

ty. He was suspected of having procured through fraud the resignation of his predecessor Celestine V., and his harsh treatment of that worthy man afterward seems to justify the reproach. His actions, however, display the intoxication of extreme self-confidence. If we may credit some historians, he appeared at the Jubilee in 1300, a festival successfully instituted by himself to throw lustre around his court and fill his treasury,* dressed in imperial habits, with the two swords borne before him, emblems of his temporal as well as spiritual dominion over the earth.†

His disputes with the King of England

It was not long after his elevation to the pontificate before Boniface displayed his temper. The two most powerful sovereigns of Europe, Philip the Fair and Edward the First, began at the same moment to attack in a very arbitrary manner the revenues of the church. The English clergy had, by their own voluntary grants, or at least those of the prelates in their name, paid frequent subsidies to the crown, from the beginning of the reign of Henry III. They had nearly, in effect, waived the ancient exemption, and retained only the common privilege of English freemen to tax themselves in a constitutional manner. But Edward I. came upon them with demands so frequent and exorbitant, that they were compelled to take advantage of a bull issued by Boniface, forbidding them to pay any contribution to the state. The king disregarded every pretext, and, seizing their goods into his hands, with other tyrannical proceedings, ultimately forced them to acquiesce in his extortion. It is remarkable, that the pope appears to have been passive throughout this contest of Edward I. with his clergy. But it was far otherwise in France. Philip the Fair had imposed a tax on the ecclesiastical order without their consent, a measure perhaps unprecedented, yet not more odious than the similar exactions of the King of England. Irritated by some previous differences, the pope issued his bull, known by the initial words Clericis laicos, absolutely forbidding the clergy of every kingdom to pay, under whatever pretext of voluntary grant, gift, or loan, any sort of tribute to their government without his especial permission. Though France was not particularly named, the king understood himself to be intended, and took his revenge by a prohibition to export money from the kingdom. This produced angry remonstrances on the part of Boniface; but the Gallican church adhered so faithfully to the crown, and showed indeed so much willingness to be spoiled of their money, that he could not insist upon the most unreasonable propositions of his bull, and ultimately allowed that the French clergy might assist their sovereign by voluntary contributions, though not by way of tax.

And of France.

For a very few years after these circumstances, the pope and King of France appeared reconciled to each other; and the latter even referred his disputes with Edward I. to the arbitration of Boniface, "as a private person, Benedict of Gaeta (his proper name), and not as pontiff;" an almost nugatory precaution against his encroachment upon temporal authority.* But a terrible storm broke out in the first year of the fourteenth century. A bishop of Pamiers, who had been sent as legate from Boniface with some complaint, displayed so much insolence, and such disrespect towards the king, that Philip, considering him as his own subject, was provoked to put him under arrest with a view to institute a criminal process. Boniface, incensed beyond measure at this violation of ecclesiastical and legatine privileges, published several bulls addressed to the king and clergy of

* The Jubilee was a centenary commemoration, in honour of St. Peter and St. Paul, established by Boniface VIII. on the faith of an imaginary precedent a century before. The period was soon reduced to fifty years, and from thence to twenty-five, as it still continues. The court of Rome, at the next jubilee, will, however, read with a sigh the description given of that in 1300. Papa innumerabilem pecuniam ab iisdem recepit, quia die et nocte duo clerici stabant ad altare Sancti Pauli, tenentes in eorum manibus rastellos, rastellantes pecuniam infinitam.—Muratori. Plenary indulgences were granted by Boniface to all who should keep their jubilee at Rome, and I suppose are still to be had on the same terms. Matteo Villani gives a curious account of the throng at Rome in 1350.

† Giannone, l. xxi., c. 3. Velly, t. vii., p. 149. I have not observed any good authority referred to for this fact, which is however in the character of Boniface.

* Walt. Hemingford, p. 150. The award of Boniface, which he expresses himself to make both as pope and Benedict of Gaeta, is published in Rymer, t. ii., p. 819, and is very equitable. Nevertheless, the French historians agree to charge him with partiality towards Edward, and mention several proofs of it, which do not appear in the bull itself. Previous to its publication, it was allowable enough to follow common fame; but Velly, a writer always careless and not always honest, has repeated mere falsehoods from Mezeray and Baillet, while he refers to the instrument itself in Rymer, which disproves them.—Hist. de France, t. vii., p. 139. M. Gaillard, one of the most candid critics in history that France ever produced, pointed out the error of her common historians in the Mém. de l'Académie des Inscriptions, t. xxxix., p. 642; and the editors of L'Art de vérifier les Dates have also rectified it.

France, charging the former with a variety of offences, some of them not at all concerning the church, and commanding the latter to attend a council which he had summoned to meet at Rome. In one of these instruments, the genuineness of which does not seem liable to much exception, he declares in concise and clear terms that the king was subject to him in temporal as well as spiritual matters. This proposition had not hitherto been explicitly advanced, and it was now too late to advance it. Philip replied by a short letter in the rudest language, and ordered his bulls to be publicly burnt at Paris. Determined, however, to show the real strength of his opposition, he summoned representatives from the three orders of his kingdom. This is commonly reckoned the first assembly of the States-General. The nobility and commons disclaimed with firmness the temporal authority of the pope, and conveyed their sentiments to Rome through letters addressed to the college of cardinals. The clergy endeavoured to steer a middle course, and were reluctant to enter into an engagement not to obey the pope's summons; yet they did not hesitate unequivocally to deny his temporal jurisdiction.

The council, however, opened at Rome; and, notwithstanding the king's absolute prohibition, many French prelates held themselves bound to be present. In this assembly Boniface promulgated his famous constitution, denominated Unam Sanctam. The church is one body, he therein declares, and has one head. Under its command are two swords, the one spiritual, and the other temporal; that to be used by the supreme pontiff himself; this by kings and knights, by his license, and at his will. But the lesser sword must be subject to the greater, and the temporal to the spiritual authority. He concludes by declaring the subjection of every human being to the See of Rome to be an article of necessary faith.* Another bull pronounces all persons of whatever rank obliged to appear when personally cited before the audience or apostolical tribunal of Rome; "since such is our pleasure, who, by divine permission, rule the world." Finally, as the rupture with Philip grew more evidently irreconcilable, and the measures pursued by that monarch more hostile, he not only excommunicated him, but offered the crown of France to the Emperor Albert I. This arbitrary transference of kingdoms was, like many other pretensions of that age, an improvement upon the right of deposing excommunicated sovereigns. Gregory VII. would not have denied that a nation, released by his authority from its allegiance, must re-enter upon its original right of electing a new sovereign. But Martin IV. had assigned the crown of Aragon to Charles of Valois; the first instance, I think, of such a usurpation of power, but which was defended by the homage of Peter II., who had rendered his kingdom feudally dependant, like Naples, upon the Holy See.* Albert felt no eagerness to realize the liberal promises of Boniface; who was on the point of issuing a bull, absolving the subjects of Philip from their allegiance, and declaring his forfeiture, when a very unexpected circumstance interrupted all his projects.

It is not surprising, when we consider how unaccustomed men were in those ages to disentangle the artful sophisms, and detect the falsehoods in point of fact, whereon the papal supremacy had been established, that the King of France should not have altogether pursued the course most becoming his dignity and the goodness of his cause. He gave too much the air of a personal quarrel with Boniface to what should have been a resolute opposition to the despotism of Rome. Accordingly, in an assembly of his states at Paris, he preferred virulent charges against the pope, denying him to have been legitimately elected, imputing to him various heresies, and ultimately appealing to a general council and a lawful head of the church. These measures were not very happily planned: and ex-

* Utergue est in potestate ecclesiæ, spiritalis, scilicet gladius et materialis. Sed is quidem pro ecclesiâ, ille vero ab ecclesiâ exercendus: ille sacerdotis, is manu regum ac militum, sed ad nutum et patientiam sacerdotis. Oportet autem gladium esse sub gladio, et temporalem auctoritatem spiritali subjici potestati. Porro subesse Romano pontifici omni humanæ creaturæ declaramus, dicimus, definimus et pronunciamus omnino esse de necessitate fidei.—Extravagant. l. i., tit. viii., c. 1.

* Innocent IV. had, however, in 1245, appointed one Bolon, brother to Sancho II., king of Portugal, to be a sort of coadjutor in the government of that kingdom, enjoining the barons to honour him as their sovereign, at the same time declaring that he did not intend to deprive the king, or his lawful issue, if he should have any, of the kingdom. But this was founded on the request of the Portuguese nobility themselves, who were dissatisfied with Sancho's administration.—Sext. Decretal., l. i., tit. viii., c. 2. Art de Vérifier les Dates, t. i., p. 778.

Boniface invested James II. of Aragon with the crown of Sardinia, over which, however, the See of Rome had always pretended to a superiority by virtue of the concession (probably spurious) of Louis the Debonair. He promised Frederick, king of Sicily, the empire of Constantinople, which, I suppose, was not a fief of the Holy See.—Giannone xx., c. 3.

perience had always shown, that Europe would no submit to change the common chief of her religion for the purposes of a single sovereign. But Philip succeeded in an attempt apparently more bold and singular. Nogaret, a minister who had taken an active share in all the proceedings against Boniface, was secretly despatched into Italy, and, joining with some of the Colonna family, proscribed as Ghibelins, and rancorously persecuted by the pope, arrested him at Anagnia, a town in the neighbourhood of Rome, to which he had gone without guards. This violent action was not, one would imagine, calculated to place the king in an advantageous light; yet it led accidentally to a favourable termination of his dispute. Boniface was soon rescued by the inhabitants of Anagnia; but rage brought on a fever, which ended in his death; and the first act of his successor, Benedict XI., was to reconcile the King of France to the Holy See.*

The sensible decline of the papacy is to be dated from the pontificate of Boniface VIII., who had strained its authority to a higher pitch than any of his predecessors. There is a spell wrought by uninterrupted good fortune, which captivates men's understanding, and persuades them, against reasoning and analogy, that violent power is immortal and irresistible. The spell is broken by the first change of success. *We* have seen the working and the dissipation of this charm with a rapidity to which the events of former times bear as remote a relation as the gradual processes of nature to her deluges and her volcanoes. In tracing the papal empire over mankind, we have no such marked and definite crisis of revolution. But slowly, like the retreat of waters, or the stealthy pace of old age, that extraordinary power over human opinion has been subsiding for five centuries. I have already observed, that the symptoms of internal decay may be traced farther back. But as the retrocession of the Roman terminus under Adrian gave the first overt proof of decline in the ambitious energies of that empire, so the tacit submission of the successors of Boniface VIII. to the King of France might have been hailed by Europe as a token that their influence was beginning to abate. Imprisoned, insulted, deprived eventually of life by the violence of Philip, a prince excommunicated, and who had gone all lengths in defying and despising the papal jurisdiction, Boniface had every claim to be avenged by the inheritors of the same spiritual dominion. When Benedict XI rescinded the bulls of his predecessor, and admitted Philip the Fair to communion without insisting on any concessions, he acted perhaps prudently, but gave a fatal blow to the temporal authority of Rome.

[A. D. 1305.] Benedict XI. lived but a few months, and his successor, Clement V., at the instigation, as is commonly supposed, of the King of France, by whose influence he had been elected, took the extraordinary step of removing the papal chair to Avignon. In this city it remained for more than seventy years; a period which Petrarch and other writers of Italy compare to that of the Babylonish captivity The majority of the cardinals was always French, and the popes were uniformly of the same nation. Timidly dependant upon the court of France, they neglected the interests, and lost the affections of Italy. Rome, forsaken by her sovereign, nearly forgot her allegiance; what remained of papal authority in the ecclesiastical territories was exercised by cardinal legates, little to the honour or advantage of the Holy See. Yet the series of Avignon pontiffs were far from insensible to Italian politics. These occupied, on the contrary, the greater part of their attention. But engaging in them from motives too manifestly selfish, and being regarded as a sort of foreigners from birth and residence, they aggravated that unpopularity and bad reputation which from various other causes attached itself to their court.

Removal of papal court to Avignon

Though none of the supreme pontiffs after Boniface VIII. ventured upon such explicit assumptions of a general jurisdiction over sovereigns by divine right as he had made in his controversy with Philip, they maintained one memorable struggle for temporal power against the Emperor Louis of Bavaria. Maxims long boldly repeated without contradiction, and in grafted upon the canon law, passed almost for articles of faith among the clergy, and those who trusted in them; and, in despite of all ancient authorities, Clement V. laid it down, that the popes, having transferred the Roman empire from the Greeks to the Germans, and delegated the right of nominating an emperor to certain electors, still reserved the prerogative of approving the choice and of receiving from its subject upon his

Contest of popes with Louis of Bavaria.

* Velly, Hist. de France, t. xii., p. 109–258. Crevier, Hist. de l'Universite de Paris, t. ii., p. 170, &c

coronation an oath of fealty and obedience.* This had a regard to Henry VII., who denied that his oath bore any such interpretation, and whose measures, much to the alarm of the court of Avignon, were directed towards the restoration of his imperial rights in Italy. Among other things, he conferred the rank of vicar of the empire upon Matteo Visconti, lord of Milan. The popes had for some time pretended to possess that vicariate, during a vacancy of the empire; and after Henry's death, insisted upon Visconti's surrender of the title. Several circumstances, for which I refer to the political historians of Italy, produced a war between the pope's legate and the Visconti family. The Emperor Louis sent assistance to the latter, as heads of the Ghibelin or imperial party. This interference cost him above twenty years of trouble. John XXII., a man as passionate and ambitious as Boniface himself, immediately published a bull, in which he asserted the right of administering the empire during its vacancy (even in Germany, as it seems from the generality of his expression), as well as of deciding in a doubtful choice of the electors, to appertain to the Holy See; and commanded Louis to lay down his pretended authority, until the supreme jurisdiction should determine upon his election. Louis's election had indeed been questionable; but that controversy was already settled in the field of Muhldorf, where he had obtained a victory over his competitor the Duke of Austria; nor had the pope ever interfered to appease a civil war during several years that Germany had been internally distracted by the dispute. [A. D. 1323.] The emperor, not yielding to this peremptory order, was excommunicated; his vassals were absolved from their oath of fealty, and all treaties of alliance between him and foreign princes annulled. Germany, however, remained firm; and if Louis himself had manifested more decision of mind and uniformity in his conduct, the court of Avignon must have signally failed in a contest, from which it did not in fact come out very successful. But while at one time he went intemperate lengths against John XXII., publishing scandalous accusations in an assembly of the citizens of Rome, and causing a Franciscan friar to be chosen in his room, after an irregular sentence of deposition, he was always anxious to negotiate terms of accommodation, to give up his own active partisans, and to make concessions the most derogatory to his independence and dignity. From John, indeed, he had nothing to expect; but Benedict XII. would gladly have been reconciled, if he had not feared the kings of France and Naples, political adversaries of the emperor, who kept the Avignon popes in a sort of servitude. His successor, Clement VI., inherited the implacable animosity of John XXII. towards Louis, who died without obtaining the absolution he had long abjectly solicited.*

Though the want of firmness in this emperor's character gave sometimes a momentary triumph to the popes, it is evident that their authority lost ground during the continuance of this struggle. Their right of confirming imperial elections was expressly denied by a diet held at Frankfort, in 1338, which established as a fundamental principle that the imperial dignity depended upon God alone, and that whoever should be chosen by a majority of the electors became immediately both king and emperor, with all prerogatives of that station, and did not require the approbation of the pope.† This law, confirmed as it was by subsequent usage, emancipated the German empire, which was immediately concerned in opposing the papal claims. But some who were actively engaged in these transactions took more extensive views, and assailed the whole edifice of temporal power which the Roman see had been constructing for more than two centuries

Spirit of resistance to papal usurpations.

* Romani principes, &c. . . . . Romano pontifici, a quo approbationem personæ ad imperialis celsitudinis apicem assumendæ, necnon unctionem, consecrationem et imperii coronam accipiunt, sua submittere capita non reputârunt indignum, seque illi et eidem ecclesiæ, quæ a Græcis imperium transtulit in Germanos, et a quâ ad certos eorum principes jus et potestas eligendi regem, in imperatorem postmodum promovendum, pertinet, adstringere vinculo juramenti, &c.—Clement., l. ii., tit. ix. The terms of the oath, as recited in this constitution, do not warrant the pope's interpretation, but imply only that the emperor shall be the advocate or defender of the church

* Schmidt, Hist. des Allemands, t. iv., p. 446, 536, seems the best modern authority for this contest between the empire and papacy.—See also Struvius, Corp. Hist. German., p. 591.

† Quòd imperialis dignitas et potestas immediatè ex solo Deo, et quòd de jure et imperii consuetudine antiquitùs approbatâ postquam aliquis eligitur in imperatorem sive regem ab electoribus imperii concorditer, vel majori parte eorundem, statim ex solâ electione est rex verus et imperator Romanorum censendus et nominandus, et eidem debet ab omnibus imperio subjectis obediri, et administrandi jura imperii, et cætera faciendi, quæ ad imperatorem verum pertinent, plenariam habet potestatem, nec Papæ sive sedis apostolicæ aut alicujus alterius approbatione, confirmatione, auctoritate indiget vel consensu.—Schmidt, p. 513

Several men of learning, among whom Dante, Ockham, and Marsilius of Padua, are the most conspicuous, investigated the foundations of this superstructure, and exposed their insufficiency.* Literature, too long the passive handmaid of spiritual despotism, began to assert her nobler birthright of ministering to liberty and truth. Though the writings of these opponents of Rome are not always reasoned upon very solid principles, they at least taught mankind to scrutinize what had been received with implicit respect, and prepared the way for more philosophical discussions. About this time a new class of enemies had unexpectedly risen up against the rulers of the church. These were a part of the Franciscan order, who had seceded from the main body on account of alleged deviations from the rigour of their primitive rule. Their schism was chiefly founded upon a quibble about the right of property in things consumable, which they maintained to be incompatible with the absolute poverty prescribed to them. This frivolous sophistry was united with the wildest fanaticism; and as John XXII. attempted to repress their follies by a cruel persecution, they proclaimed aloud the corruption of the church, fixed the name of antichrist upon the papacy, and warmly supported the Emperor Louis throughout all his contention with the Holy See.†

Rapacity of Avignon popes.

Meanwhile the popes who sat at Avignon continued to invade with surprising rapaciousness the patronage and revenues of the church. The mandats or letters directing a particular clerk to be preferred seems to have given place in a great degree to the more effectual method of appropriating benefices by reservation or provision, which was carried to an enormous extent in the fourteenth century. John XXII., the most insatiate of pontiffs, reserved to himself all the bishoprics in Christendom.* Benedict XII. assumed the privilege for his own life of disposing of all benefices vacant by cession, deprivation, or translation. Clement VI. naturally thought that his title was equally good with his predecessor's, and continued the same right for his own time which soon became a permanent rule of the Roman chancery.† Hence the appointment of a prelate to a rich bishopric was generally but the first link in a chain of translation, which the pope could regulate according to his interest. Another capital innovation was made by John XXII. in the establishment of the famous tax called annates, or first fruits of ecclesiastical benefices, which he imposed for his own benefit. These were one year's value, estimated according to a fixed rate in the books of the Roman chancery, and payable to the papal collectors throughout Europe.‡ Various other devices were invented to obtain money, which these degenerate popes abandoning the magnificent schemes of their predecessors, were content to seek as their principal object. John XXII. is said to have accumulated an almost incredible treasure, exaggerated perhaps by the ill-will of his contemporaries §; but it may be doubted whether even his avarice reflected greater dishonour on the church than the licentious profuseness of Clement VI.‖

These exactions were too much encouraged by the kings of France, who participated in the plunder, or at least required the mutual assistance of the popes for their own imposts on the clergy. John XXII. obtained leave of Charles

* Giannone, l. xxii., c. 8. Schmidt, t. vi., p. 152. Dante was dead before these events, but his principles were the same. Ockham had already exerted his talents in the same cause by writing, in behalf of Philip IV. against Boniface, a dialogue between a knight and a clerk on the temporal supremacy of the church. This is published among other tracts of the same class in Goldastus, Monarchia Imperii, p. 13. This dialogue is translated entire in the Songe du Vergier, a more celebrated performance, ascribed to Raoul de Presles under Charles V.

† The schism of the rigid Franciscans or Fratricelli is one of the most singular parts of ecclesiastical history, and had a material tendency both to depress the temporal authority of the papacy, and to pave the way for the Reformation. It is fully treated by Mosheim, cent. 13 and 14; and by Crevier, Hist. de l'Université de Paris, t. ii., p. 233–261. &c.

* Fleury, Institutions, &c., t. i., p. 368. F. Paul on Benefices, c. 37.

† F. Paul, c. 38. Translations of bishops had been made by the authority of the metropolitan, till Innocent III. reserved this prerogative to the Holy See.—De Marca, l. vi., c. 8.

‡ F. Paul, c. 38. Fleury, p. 424. De Marca, l. vi., c. 10. Pasquier, l. iii., c. 28. The popes had long been in the habit of receiving a pecuniary gratuity when they granted the pallium to an archbishop, though this was reprehended by strict men, and even condemned by themselves.—De Marca, ibid. It is noticed as a remarkable thing of Innocent IV., that he gave the pall to a German archbishop without accepting any thing.—Schmidt, t. iv., p. 172. The original and nature of annates is copiously treated in Lenfant, Concile de Constan. t. ii., p. 133.

§ G. Villani puts this at 25,000,000 of florins which it is hardly possible to believe. The Italians were credulous enough to listen to any report against the popes of Avignon.—L. xi. c. 20. Giannone, l. xxii., c. 8.

‖ For the corruption of morals at Avignon during the secession, see De Sade, Vie de Pétrarque, t. i., p. 70. and several other passages.

the Fair to levy a tenth of ecclesiastical revenues,* and Clement VI., in return, granted two tenths to Philip of Valois for the expenses of his war. A similar tax was raised by the same authority towards the ransom of John.† These were contributions for national purposes unconnected with religion, which the popes had never before pretended to impose, and which the king might properly have levied with the consent of his clergy, according to the practice of England. But that consent might not always be obtained with ease, and it seemed a more expeditious method to call in the authority of the pope. A manlier spirit was displayed by our ancestors. It was the boast of England to have placed the first legal barrier to the usurpations of Rome, if we except the dubious and insulated Pragmatic Sanction of St. Louis, from which the practice of succeeding ages in France entirely deviate. The English barons had, in a letter addressed to Boniface VIII., absolutely disclaimed his temporal supremacy over their crown, which he had attempted to set up by intermeddling in the quarrel of Scotland.‡ This letter, it is remarkable, is nearly co-incident in point of time with that of the French nobility; and the two combined may be considered as a joint protestation of both kingdoms, and a testimony to the general sentiment among the superior ranks of the laity. A very few years afterward, the parliament of Carlisle wrote a strong remonstrance to Clement V. against the system of provisions and other extortions, including that of first fruits, which it was rumoured, they say, he was meditating to demand.§ But the court of Avignon was not to be moved by remonstrances; and the feeble administration of Edward II. gave way to ecclesiastical usurpations at home as well as abroad.‖ His magnanimous son took a bolder line. After complaining ineffectually to Clement VI. of the enormous abuse which reserved almost all English benefices to the pope, and generally for the benefit of aliens,* he passed in 1350 the famous statute of provisors. This act, reciting one supposed to have been made at the parliament of Carlisle, which, however, does not appear,† and complaining in strong language of the mischief sustained through continual reservations of benefices, enacts that all elections and collations shall be free, according to law, and that, in case any provision or reservation should be made by the court of Rome, the king should for that turn have the collation of such benefice, if it be of ecclesiastical election or patronage.‡ This devolution to the crown, which seems a little arbitrary, was the only remedy that could be effectual against the connivance and timidity of chapters and spiritual patrons. We cannot assert that a statute so nobly planned was executed with equal steadiness. Sometimes by royal dispensation, sometimes by neglect or evasion the papal bulls of provision were still obeyed, though fresh laws were enacted to the same effect as the former. It was found on examination in 1367, that some clerks enjoyed more than twenty benefices by the pope's dispensation.§ And the parliaments both of this and of Richard II.'s reign invariably complain of the disregard shown to the statutes of provisors. This led to other measures, which I shall presently mention.

Return of Popes to Rome.

The residence of the popes at Avignon gave very general offence to Europe, and they could not themselves avoid perceiving the disadvantage of absence from their proper diocess, the city of St. Peter, the source of all their claims to sovereign authority. But Rome, so long abandoned, offered but an inhospitable reception; Urban V.

* Continuator Gul. de Nangis, in Spicilegio d'Achery, t. iii., p. 86 (folio ed.), ita miseram ecclesiam, says this monk, unus tondet, alter excoriat.

† Fleury, Institut. au Droit ecclésiastique, t. ii., p. 245. Villaret, t. ix., p. 431. It became a regular practice for the king to obtain the pope's consent to lay a tax on his clergy; though he sometimes applied first to themselves.—Garnier, t. xx., p 141.

‡ Rymer, t. ii., p. 373. Collier, vol. i., p. 725.

§ Rotuli Parliamenti, vol. i., p. 204. This passage, hastily read, has led Collier and other English writers, such as Henry and Blackstone, into the supposition that annates were imposed by Clement V. But the concurrent testimony of foreign authors refers this tax to John XXII., as the canon law also shows.—Extravagant. Communes, l. iii., tit ii., c. 11.

The statute called Articuli cleri, in 1316, was directed rather towards confirming than limiting the clerical immunity in criminal cases.

* Collier, p. 546.

† It is singular that Sir E. Coke should assert that this act recites, and is founded upon the statute 35 E. I., De asportatis religiosorum (2 Inst., 580); whereas there is not the least resemblance in the words, and very little, if any, in the substance. Blackstone, in consequence, mistakes the nature of that act of Edward I., and supposes it to have been made against papal provisions, to which I do not perceive even an allusion. Whether any such statute was really made in the Carlisle parliament of 35 E. I., as is asserted both in 25 E. III., and in the roll of another parliament 17 E. III (Rot. Parl., t. ii., p. 144), is hard to decide; and perhaps those who examine this point will have to choose between wilful suppression and wilful interpolation.

‡ 25 E. III., stat. 6. § Collier, p. 568.

returned to Avignon, after a short experiment of the capital; and it was not till 1376 that the promise, often repeated and long delayed, of restoring the papal chair to the metropolis of Christendom, was ultimately fulfilled by Gregory XI. His death, which happened soon afterward, prevented, it is said, a second flight that he was preparing. This was followed by the great schism, one of the most remarkable events in ecclesiastical history. It is a difficult and by no means an interesting question to determine the validity of that contested election which distracted the Latin church for so many years. [A. D. 1377.] All contemporary testimonies are subject to the suspicion of partiality in a cause where no one was permitted to be neutral. In one fact, however, there is a common agreement, that the cardinals, of whom the majority were French, having assembled in conclave for the election of a successor to Gregory XI., were disturbed by a tumultuous populace, who demanded with menaces a Roman, or, at least, an Italian pope. This tumult appears to have been sufficiently violent to excuse, and in fact did produce, a considerable degree of intimidation. After some time, the cardinals made choice of the Archbishop of Bari, a Neapolitan, who assumed the name of Urban VI. His election satisfied the populace, and tranquillity was restored. The cardinals announced their choice to the absent members of their college, and behaved towards Urban as their pope for several weeks. But his uncommon harshness of temper giving them offence, they withdrew to a neighbouring town, and protesting that his election had been compelled by the violence of the Roman populace, annulled the whole proceeding, and chose one of their own number, who took the pontifical name of Clement VII. Such are the leading circumstances which produced the famous schism. Constraint is so destructive of the essence of election, that suffrages given through actual intimidation ought, I think, to be held invalid, even without minutely inquiring whether the degree of illegal force was such as might reasonably overcome the constancy of a firm mind. It is improbable that the free votes of the cardinals would have been bestowed on the Archbishop of Bari; and I should not feel much hesitation in pronouncing his election to have been void. But the sacred college unquestionably did not use the earliest opportunity of protesting against the violence they had suffered: and we may infer almost with certainty, that if Urban's conduct had been more acceptable to that body, the world would have heard little of the transient riot at his election. This however opens a delicate question in jurisprudence; namely under what circumstance acts, not only irregular, but substantially invalid, are capable of receiving a retro-active confirmation by the acquiescence and acknowledgment of parties concerned to oppose them. And upon this, I conceive, the great problem of legitimacy between Urban and Clement will be found to depend.*

Contested election of Urban VI. and Clement VII.

Whatever posterity may have judged about the pretensions of these competitors, they at that time shared the obedience of Europe in nearly equal proportions. Urban remained at Rome; Clement resumed the station of Avignon. To the former adhered Italy the empire, England, and the nations of the north; the latter retained in his allegiance France, Spain, Scotland, and Sicily. Fortunately for the church, no question of religious faith intermixed itself with this schism; nor did any other impediment to reunion exist, than the obstinacy and selfishness of the contending parties. As it was impossible to come to any agreement on the original merits, there seemed to be no means of healing the wound but by the abdication of both popes and a fresh undisputed election. This was the general wish of Europe, but urged with particular zeal by the court of France, and, above all, by the university of Paris, which esteems this period the most honourable in her annals The cardinals however of neither obedience would recede so far from their party as to suspend the election of a successor upon a vacancy of the pontificate, which would have at least removed one half of the obstacle. The Roman conclave accordingly placed three pontiffs successively, Boniface IX., Innocent VI., and Gregory XII., in the seat of Urban VI.; and the cardinals at Avignon, upon the death of Clement, in 1394, elected Benedict XIII. (Peter de Luna), famous for his inflexible obstinacy in prolonging the schism. He repeatedly promised to

The Great Schism.

* Lenfant has collected all the original testimonies on both sides in the first book of his Concile de Pise. No positive decision has ever been made on the subject, but the Roman popes are numbered in the commonly received list, and those of Avignon are not. The modern italian writers express no doubt about the legitimacy of Urban; the French at most intimate that Clement's pretensions were not to be wholly rejected. But I am saying too much on a question so utterly unimportant.

sacrifice his dignity for the sake of union. But there was no subterfuge to which this crafty pontiff had not recourse in order to avoid compliance with his word, though importuned, threatened, and even besieged in his palace at Avignon. Fatigued by his evasions, France withdrew her obedience, and the Gallican church continued for a few years without acknowledging any supreme head. But this step, which was rather the measure of the university at Paris than of the nation, it seemed advisable to retract; and Benedict was again obeyed, though France continued to urge his resignation. A second subtraction of obedience, or at least declaration of neutrality, was resolved upon, as preparatory to the convocation of a general council. On the other hand, those who sat at Rome displayed not less insincerity. Gregory XII. bound himself by oath on his accession to abdicate when it should appear necessary. But while these rivals were loading each other with the mutual reproach of schism, they drew on themselves the suspicion of at least a virtual collusion in order to retain their respective stations. At length the cardinals of both parties, wearied with so much dissimulation, deserted their masters, and summoned a general council to meet at Pisa.*

[A. D. 1409.] The council assembled at Pisa deposed both Gregory and Benedict, without deciding in any respect as to their pretensions, and elected Alexander V. by its own supreme authority. This authority, however, was not universally recognised; the schism, instead of being healed, became more desperate; for, as Spain adhered firmly to Benedict, and Gregory was not without supporters, there were now three contending pontiffs in the church. A general council was still, however, the favourite, and indeed the sole remedy; and John XXIII., successor of Alexander V., was reluctantly prevailed upon, or perhaps trepanned into convoking one to meet at Constance. [A. D. 1414.] In this celebrated assembly he was himself deposed; a sentence which he incurred by that tenacious clinging to his dignity, after repeated promises to abdicate, which had already proved fatal to his competitors. The deposition of John, confessedly a legitimate pope, may strike us as an extraordinary measure. But, besides the opportunity it might afford of restoring union, the council found a pretext for this sentence in his enormous vices, which indeed they seem to have taken upon common fame without any judicial process. The true motive, however, of their proceedings against him, was a desire to make a signal display of a new system, which had rapidly gained ground, and which I may venture to call the whig principles of the Catholic church. A great question was at issue, whether the polity of that establishment should be an absolute, or an exceedingly limited monarchy. The papal tyranny, long endured and still increasing, had excited an active spirit of reformation which the most distinguished ecclesiastics of France and other countries encouraged They recurred, as far as their knowledge allowed, to a more primitive discipline than the canon law, and elevated the supremacy of general councils. But in the formation of these they did not scruple to introduce material innovations. The bishops have usually been considered the sole members of ecclesiastical assemblies. At Constance, however, sat and voted not only the chiefs of monasteries, but the ambassadors of all Christian princes, the deputies of universities, with a multitude of inferior theologians, and even doctors of law.* These were naturally accessible to the pride of sudden elevation, which enabled them to control the strong, and humiliate the lofty. In addition to this, the adversaries of the court of Rome carried another not less important innovation. The Italian bishops, almost universally in the papal interests, were so numerous, that, if suffrages had been taken by the head, their preponderance would have impeded any measures of transalpine nations towards reformation. It was determined, therefore, that the council should divide itself into four nations, the Italian, the German the French, and the English; each with equal rights, and that every proposition having been separately discussed, the majority of the four should prevail.† This

Council of Pisa

Council of Constance

* Villaret. Lenfant, Concile de Pise. Crevier, Hist de l'Université de Paris. t. iii.

* Lenfant, Concile de Constance, t. i., p. 107 (edit. 1727). Crevier, t. iii., p. 405. It was agreed that the ambassadors could not vote upon articles of faith, but only on questions relating to the settlement of the church. But the second order of ecclesiastics were allowed to vote generally.

† This separation of England, as a coequal limb of the council, gave great umbrage to the French, who maintained that, like Denmark and Sweden, it ought to have been reckoned along with Germany. The English deputies came down with a profusion of authorities to prove the antiquity of their monarchy, for which they did not fail to put in requisition the immeasurable pedigrees of Ireland. Joseph of Arimathea, who planted Christianity and

revolutionary spirit was very unacceptable to the cardinals, who submitted reluctantly, and with a determination that did not prove altogether unavailing, to save their papal monarchy by a dexterous policy. They could not, however, prevent the famous resolutions of the fourth and fifth sessions, which declare that the council has received by divine right an authority to which every rank, even the papal, is obliged to submit, in matters of faith, in the extirpation of the present schism, and in the reformation of the church both in its head and its members; and that every person, even a pope, who shall obstinately refuse to obey that council, or any other lawfully assembled, is liable to such punishment as shall be necessary.* These decrees are the great pillars of that moderate theory with respect to the papal authority which distinguished the Gallican church, and is embraced, I presume, by almost all laymen and the major part of ecclesiastics on this side of the Alps. They embarrass the more popish churchmen as the Revolution does our English tories; some boldly impugn the authority of the council of Constance, while others chicane upon the interpretation of its decrees. Their practical importance is not, indeed, direct; universal councils exist only in possibility; but the acknowledgment of a possible authority paramount to the see of Rome has contributed, among other means, to check its usurpations.

The purpose for which these general councils had been required, next to that of healing the schism, was the reformation of abuses. All the rapacious exactions, all the scandalous venality of which Europe had complained, while unquestioned pontiffs ruled at Avignon, appeared light in comparison of the practices of both rivals during the schism. Tenths repeatedly levied upon the clergy, annates rigorously exacted and enhanced by new valuations, fees annexed to the complicated formalities of the papal chancery, were the means by which each half of the church was compelled to reimburse its chief for the subtraction of the other's obedience. Boniface IX., one of the Roman line, whose fame is a little worse than that of his antagonists, made a gross traffic of his patronage; selling the privileges of exemption from ordinary jurisdiction, of holding benefices in commendam, and other dispensations invented for the benefit of the Holy See.* Nothing had been attempted at Pisa towards reformation. At Constance the majority were ardent and severe; the representatives of the French, German, and English churches met with a determined and, as we have seen, not always unsuccessful resolution to assert their ecclesiastical liberties. They appointed a committee of reformation, whose recommendations, if carried into effect, would have annihilated almost entirely that artfully constructed machinery by which Rome had absorbed so much of the revenues and patronage of the church. But men interested in perpetuating these abuses, especially the cardinals, improved the advantages which a skilful government always enjoys in playing against a popular assembly. They availed themselves of the jealousies arising out of the division of the council into nations, which exterior political circumstances had enhanced. France, then at war with England, whose pretensions to be counted as a fourth nation she had warmly disputed, and not well disposed towards the Emperor Sigismund, joined with the Italians against the English and German members of the council in a matter of the utmost importance, the immediate election of a pope before the articles of reformation should be finally concluded. These two nations, in return, united with the Italians to choose the Cardinal Colonna, against the advice of the French divines, who objected to any member of the sacred college. The court of Rome were gainers in both questions. Martin V., the new pope, soon evinced his determination to elude any substantial reform. After publishing a few constitutions tending to redress some of the abuses that had arisen during the schism, he contrived to make separate conventions with the several nations, and as soon as possible dissolved the council.†

By one of the decrees passed at Constance, another general council was to be

his stick at Glastonbury, did his best to help the cause. The recent victory of Azincourt, I am inclined to think, had more weight with the council.—Lenfant, t. ii., p. 46.

At a time when a very different spirit prevailed, the English bishops under Henry II. and Henry III. had claimed as a right, that no more than four of their number should be summoned to a general council.—Hoveden, p. 320; Carte, vol. ii., p. 84. This was like boroughs praying to be released from sending members to parliament.

* Idem, p. 164. Crevier, t. iii., p. 417.

* Lenfant, Hist. du Concile de Pise, passim. Crevier, Villaret, Schmidt, Collier.

† Lenfant, Concile de Constance. The copiousness as well as impartiality of this work justly render it an almost exclusive authority. Crevier (Hist. de l'Université de Paris, t. iii.) has given a good abridgment; and Schmidt (Hist. des Allemands, . v.) is worthy of attention.

assembled in five years, a second at the end of seven more, and from that time a similar representation of the church was to meet every ten years. Martin V. accordingly convoked a council at Pavia, which, on account of the plague, was transferred to Siena; but nothing of importance was transacted by this assembly.* [A. D. 1433.] That which he summoned seven years afterward to the city of Basle had very different results. The pope, dying before the meeting of this council, was succeeded by Eugenius IV., who, anticipating the spirit of its discussions, attempted to crush its independence in the outset by transferring the place of session to an Italian city. No point was reckoned so material in the contest between the popes and reformers, as whether a council should sit in Italy or beyond the Alps. The council of Basle began, as it proceeded, in open enmity to the court of Rome. Eugenius, after several years had elapsed in more or less hostile discussions, exerted his prerogative of removing the assembly to Ferrara, and from thence to Florence. For this he had a specious pretext in the negotiation, then apparently tending to a prosperous issue, for the reunion of the Greek church; a triumph, however transitory, of which his council at Florence obtained the glory. On the other hand, the assembly at Basle, though much weakened by the defection of those who adhered to Eugenius, entered into compacts with the Bohemian insurgents more essential to the interests of the church than any union with the Greeks, and completed the work begun at Constance by abolishing the annates, the reservations of benefices, and other abuses of papal authority. In this it received the approbation of most princes; but when, provoked by the endeavours of the pope to frustrate its decrees, it proceeded so far as to suspend and even to depose him, neither France nor Germany concurred in the sentence. Even the council of Constance had not absolutely asserted a right of deposing a lawful pope, except in case of heresy, though their conduct towards John could not otherwise be justified † This question

of Basle

indeed of ecclesiastical public law seems to be still undecided. The fathers of Basle acted however with greater intrepidity than discretion, and not perhaps sensible of the change that was taking place in public opinion, raised Amadeus, a retired duke of Savoy, to the pontifical dignity, by the name of Felix V. They thus renewed the schism, and divided the obedience of the Catholic church for a few years. The empire, however, as well as France, observed a singular and not very consistent neutrality respecting Eugenius as lawful pope, and the assembly at Basle as a general council. England warmly supported Eugenius, and even adhered to his council at Florence; Aragon and some countries of smaller note acknowledged Felix. But the partisans of Basle became every year weaker; and Nicolas V., the successor of Eugenius, found no great difficulty in obtaining the cession of Felix, and terminating this schism. This victory of the court of Rome over the council of Basle nearly counterbalanced the disadvantageous events at Constance, and put an end to the project of fixing permanent limitations upon the head of the church by means of general councils. Though the decree that prescribed the convocation of a council every ten years was still unrepealed, no absolute monarchs have ever more dreaded to meet the representatives of their people, than the Roman pontiffs have abhorred the name of those ecclesiastical synods once alone, and that with the utmost reluctance, has the Catholic church been convoked since the council of Basle; but the famous assembly to which I allude does not fall within the scope of my present undertaking.*

It is a natural subject of speculation, what would have been the effects of these universal councils, which were so popular in the fifteenth century, if the decree passed at Constance for their periodical assembly had been regularly observed? Many Catholic writers, of the moderate or cisalpine school, have lamented their disuse, and ascribed to it that irreparable

* Lenfant, Guerre des Hussites, t. i., p. 223.

† The council of Basle endeavoured to evade this difficulty by declaring Eugenius a relapsed heretic. —Lenfant, Guerre des Hussites, t. ii., p. 98. But as the church could discover no heresy in his disagreement with that assembly, the sentence of deposition gained little strength by this previous decision. The bishops were unwilling to take this sole *i* step against Eugenius; but the minor theologians, the democracy of the Catholic church, whose right of suffrage seems rather an anomalous infringement of episcopal authority, pressed it with much heat and rashness. See a curious passage on this subject in a speech of the Cardinal of Arles. —Lenfant, t. ii., p. 225.

* There is not, I believe, any sufficient history of the council of Basle. Lenfant designed to write it from the original acts, but, finding his health decline, intermixed some rather imperfect notices of its transactions with his history of the Hussite war, which is commonly quoted under the title of History of the Council of Basle. Schmidt, Crevier, Villaret, are still my other authorities.

breach which the Reformation has made in the fabric of their church. But there is almost an absurdity in conceiving their permanent existence. What chymistry could have kept united such heterogeneous masses, furnished with every principle of mutual repulsion? Even in early times, when councils, though nominally general, were composed of the subjects of the Roman empire, they had been marked by violence and contradiction: what then could have been expected from the delegates of independent kingdoms, whose ecclesiastical polity, whatever may be said of the spiritual unity of the church, had long been far too intimately blended with that of the state, to admit of any general control without its assent? Nor, beyond the zeal, unquestionably sincere, which animated their members, especially at Basle, for the abolition of papal abuses, is there any thing to praise in their conduct, or to regret in their cessation. The statesman, who dreaded the encroachments of priests upon the civil government, the Christian, who panted to see his rites and faith purified from the corruption of ages, found no hope of improvement in these councils. They took upon themselves the pretensions of the popes whom they attempted to supersede. By a decree of the fathers at Constance, all persons, including princes, who should oppose any obstacle to a journey undertaken by the Emperor Sigismund, in order to obtain the cession of Benedict, are declared excommunicated, and deprived of their dignities, whether secular or ecclesiastical.* Their condemnation of Huss and Jerome of Prague, and the scandalous breach of faith which they induced Sigismund to commit on that occasion, are notorious. But perhaps it is not equally so, that this celebrated assembly recognised by a solemn decree the flagitious principle which it had practised, declaring that Huss was unworthy, through his obstinate adherence to heresy, of any privilege; nor ought any faith or promise to be kept with him, by natural, divine, or human law, to the prejudice of the Catholic religion.† It will be easy to estimate the claims of this congress of theologians to our veneration, and to weigh the retrenchment of a few abuses against the formal sanction of an atrocious maxim.

It was not, however, necessary for any government of tolerable energy to seek the reform of those abuses which affected the independence of national churches, and the integrity of their regular discipline, at the hands of a general council. Whatever difficulty there might be in overturning the principles founded on the decretals of Isidore, and sanctioned by the prescription of many centuries, the more flagrant encroachments of papal tyranny were fresh innovations, some within the actual generation, others easily to be traced up, and continually disputed. The principal European nations determined, with different degrees indeed of energy, to make a stand against the despotism of Rome. In this resistance England was not only the first engaged, but the most consistent; her free parliament preventing, as far as the times permitted that wavering policy to which a court is liable. We have already seen that a foundation was laid in the statute of provisors under Edward III. In the next reign, many other measures tending to repress the interference of Rome were adopted; especially the great statute of premunire, which subjects all persons bringing papal bulls for translation of bishops and other enumerated purposes into the kingdom to the penalties of

* Lenfant, t. i., p. 439.

† Nec aliqua sibi fides aut promissio, de jure naturali, divino, et humano fuerit in prejudicium Catholicæ fidei observanda.—Lenfant, t. i., p. 491.

This proposition is the great disgrace of the council in the affair of Huss. But the violation of his safe-conduct being a famous event in ecclesiastical history, and which has been very much disputed with some degree of erroneous statement on both sides, it may be proper to give briefly an impartial summary. 1. Huss came to Constance with a safe-conduct of the emperor, very loosely worded, and not directed to any individuals.—Lenfant, t. i, p. 59. 2. This pass, however, was binding upon the emperor himself, and was so considered by him, when he remonstrated against the arrest of Huss.—Id., p. 73, 83. 3. It was not binding on the council, who possessed no temporal power, but had a right to decide upon the question of heresy. 4. It is not manifest by what civil authority Huss was arrested, nor can I determine how far the imperial safe-conduct was a legal protection within the city of Constance. 5. Sigismund was persuaded to acquiesce in the capital punishment of Huss, and even to make it his own act (Lenfant, p. 409); by which he manifestly broke his engagement. 6. It is evident that in this he acted by the advice and sanction of the council, who thus became accessary to the guilt of his treachery.

The great moral to be drawn from the story of John Huss's condemnation is, that no breach of faith can be excused by our opinion of ill desert in the party, or by a narrow interpretation of our own engagements. Every capitulation ought to be construed favourably for the weaker side. In such cases it is emphatically true, that if the letter killeth, the spirit should give life.

Gerson, the most eminent theologian of his age, and the coryphæus of the party that opposed the transalpine principles, was deeply concerned in this atrocious business.—Crevier, p. 412

forfeiture and perpetual imprisonment.* This act received, and probably was designed to receive, a larger interpretation than its language appears to warrant. Combined with the statute of provisors, it put a stop to the pope's usurpation of patronage, which had empoverished the church and kingdom of England for nearly two centuries. Several attempts were made to overthrow these enactments; the first parliament of Henry IV. gave a very large power to the king over the statute of provisors, enabling him even to annul it at his pleasure.† This, however, does not appear in the statute-book. Henry, indeed, like his predecessors, exercised rather largely his prerogative of dispensing with the law against papal provisions; a prerogative which, as to this point, was itself taken away by an act of his own, and another of his son Henry V.‡ But the statute always stood unrepealed; and it is a satisfactory proof of the ecclesiastical supremacy of the legislature, that in the concordat made by Martin V. at the council of Constance with the English nation, we find no mention of reservation of benefices, of annates, and the other principal grievances of that age;§ our ancestors disdaining to accept by compromise with the pope any modification or even confirmation of their statute law. They had already restrained another flagrant abuse, the increase of first fruits by Boniface IX.; an act of Henry IV. forbidding any greater sum to be paid on that account than had been formerly accustomed.‖

Influence of Wicliffe's tenets.

It will appear evident to every person acquainted with the contemporary historians and the proceedings of parliament, that besides partaking in the general resentment of Europe against the papal court, England was under the influence of a peculiar hostility to the clergy, arising from the dissemination of the principles of Wicliffe.¶ All ecclesiastical possessions were marked for spoliation by the system of this reformer; and the House of Commons more than once endeavoured to carry it into effect, pressing Henry IV to seize the temporalities of the church for public exigences.* This recommendation, besides its injustice, was not likely to move Henry, whose policy had been to sustain the prelacy against their new adversaries. Ecclesiastical jurisdiction was kept in better control than formerly by the judges of common law, who, through rather a strained construction of the statute of premunire, extended its penalties to the spiritual courts when they transgressed their limits.† The privilege of clergy in criminal cases still remained; but it was acknowledged not to comprehend high treason.‡

Concordats of Aschaffenburg.

Germany, as well as England, was disappointed of her hopes of general reformation by the Italian party at Constance; but she did not supply the want of the council's decrees with sufficient decision. A concordat with Martin V. left the pope in possession of too great a part of his recent usurpations.§ This, however, was repugnant to the spirit of Germany, which called for a more thorough reform with all the national roughness and honesty. The diet of Mentz, during the continuance

* 16 Ric. II., c. 5.

† Rot. Parl., vol. iii., p. 428.

‡ 7 H. IV., c. 8; 3 H. V., c. 4. Martin V. published an angry bull against the "execrable statute" of premunire, enjoining Archbishop Chicheley to procure its repeal.—Collier, p. 653. Chicheley did all in his power; but the commons were always inexorable on this head, p. 636: and the archbishop even incurred Martin's resentment by it.—Wilkins, Concilia, t. iii., p. 483.

§ Lenfant, t. ii., p 444. ‖ 6 H. IV., c. 1.

¶ See, among many other passages, the articles exhibited by the Lollards to parliament against the clergy, in 1394. Collier gives the substance of them, and they are noticed by Henry: but they are at full length in Wilkins, t. iii p. 221.

* Walsingham, p. 371, 379. Rot. Parl., 11 H. IV., vol. iii., p. 645. The remarkable circumstances detailed by Walsingham in the former passage are not corroborated by any thing in the records. But as it is unlikely that so particular a narrative should have no foundation, Hume has plausibly conjectured that the roll has been wilfully mutilated. As this suspicion occurs in other instances, it would be desirable to ascertain, by examination of the original rolls, whether they bear any external marks of injury. The mutilators, however, if such there were, have left a great deal. The rolls of Henry IV. and V.'s parliaments are quite full of petitions against the clergy.

† 3 Inst., p. 121. Collier, vol. i., p. 668.

‡ 2 Inst., p. 634, where several instances of priests executed for coining and other treasons are adduced. And this may also be inferred from 25 E. III., stat. 3, c. 4; and from 4 H. IV., c. 3. Indeed, the benefit of clergy has never been taken away by statute from high treason. This renders it improbable that Chief-justice Gascoyne should, as Carte tells us, vol. ii., p. 664, have refused to try Archbishop Scrope for treason, on the ground that no one could lawfully sit in judgment on a bishop for his life. Whether he might have declined to try him as a peer, is another question. The pope excommunicated all who were concerned in Scrope's death, and it cost Henry a large sum to obtain absolution. But Boniface IX. was no arbiter of the English law. Edward IV. granted a strange charter to the clergy, not only dispensing with the statutes of premunire, but absolutely exempting them from temporal jurisdiction in cases of treason as well as felony.—Wilkins, Concilia, t. iii., p. 583 Collier, p. 678. This, however, being an illegal grant, took no effect, at least after his death

§ Lenfant, t. ii., p. 428. Schmidt, t. v., p. 131

of the council of Basle, adopted all those regulations hostile to the papal interests which occasioned the deadly quarrel between that assembly and the court of Rome.* But the German empire was betrayed by Frederick III., and deceived by an accomplished but profligate statesman, his secretary, Æneas Sylvius. Fresh concordats, settled at Aschaffenburg, in 1448, nearly upon the footing of those concluded with Martin V., surrendered great part of the independence for which Germany had contended. The pope retained his annates, or at least a sort of tax in their place; and instead of reserving benefices arbitrarily, he obtained the positive right of collation during six alternate months of every year. Episcopal elections were freely restored to the chapters, except in case of translation, when the pope still continued to nominate: as he did also, if any person, canonically unfit, were presented to him for confirmation.† Such is the concordat of Aschaffenburg, by which the Catholic principalities of the empire have always been governed, though reluctantly acquiescing in its disadvantageous provisions. Rome, for the remainder of the fifteenth century, not satisfied with the terms she had imposed, is said to have continually encroached upon the right of election.‡ But she purchased too dearly her triumph over the weakness of Frederick III., and the hundred grievances of Germany, presented to Adrian VI. by the diet of Nuremberg, in 1522, manifested the workings of a long-treasured resentment, that had made straight the path before the Saxon reformer.

Papal encroachments on church of Castile.

I have already taken notice that the Castilian church was in the first ages of that monarchy nearly independent of Rome. But, after many gradual encroachments, the code of laws promulgated by Alfonso X. had incorporated a great part of the decretals, and thus given the papal jurisprudence an authority which it nowhere else possessed in national tribunals.* That richly-endowed hierarchy was a tempting spoil. The popes filled up its benefices by means of expectatives and reserves with their own Italian dependants. We find the cortes of Palencia, in 1388, complaining that strangers are beneficed in Castile, through which the churches are ill supplied, and native scholars cannot be provided, and requesting the king to take such measures in relation to this as the kings of France, Aragon, and Navarre, who do not permit any but natives to hold benefices in their kingdoms. The king answered to this petition that he would use his endeavours to that end.† And this is expressed with greater warmth by a cortes of 1473, who declare it to be the custom of all Christian nations that foreigners should not be promoted to benefices, urging the discouragement of native learning, the decay of charity, the bad performance of religious rites, and other evils arising from the nonresidence of beneficed priests, and request the king to notify to the court of Rome that no expectative or provision in favour of foreigners can be received in future.‡ This petition seems to have passed into a law; but I am ignorant of the consequences. Spain certainly took an active part in restraining the abuses of pontifical authority at the councils of Constance and Basle; to which I might add the name of Trent, if that assembly were not beyond my province

Checks on papal authority in France.

France, dissatisfied with the abortive termination of her exertions during the schism, rejected the concordat offered by Martin V., which held out but a promise of imperfect reformation.◊ She suffered in consequence the papal exactions for some years, till the decrees of the council of Basle prompted her to more vigorous efforts for independence, and Charles VII. enacted the famous Pragmatic Sanction of Bourges.‖ This has been deemed a sort of Magna Charta of the Gallican church; for though the law was speedily abrogated, its principle has remained fixed as the basis of ecclesiastical liberties. By the Pragmatic Sanction a general council was declared superior to the pope

* Schmidt, t. v., p. 221. Lenfant.

† Schmidt, t. v., p. 250; t. vi., p. 94, &c. He observes that there is three times as much money at present as in the fifteenth century; if, therefore, the annates are now felt as a burden, what must they have been? p. 113. To this Rome would answer: if the annates were but sufficient for the pope's maintenance at that time, what must they be now?

‡ Schmidt, p. 98. Æneas Sylvius, Epist 369 and 371; and De Moribus Germanorum, p. 1041. 1051. Several little disputes with the pope indicate the spirit that was fermenting in Germany throughout the fifteenth century. But this is the proper subject of a more detailed ecclesiastical history, and should form an introduction to that of the Reformation.

* Marina, Ensayo Historico-Critico, c. 320, &c.

† Idem, Teoria de las Cortes, t. iii., p. 126.

‡ Idem, t. ii., p. 364. Mariana, Hist. Hispan., l. xix., c. 1.

◊ Villaret, t. xv., p. 126.

‖ Idem, p. 263. Hist. du Droit Public Ecclés. François, t. ii., p. 234. Fleury, Institutions au Droit. Crevier, t. iv., p. 100. Pasquier, Recherches de la France, l. iii. c. 27

elections of bishops were made free from all control; mandats or grants in expectancy, and reservations of benefices were taken away; first fruits were abolished. This defalcation of wealth, which had now become dearer than power, could not be patiently borne at Rome. Pius II., the same Æneas Sylvius who had sold himself to oppose the council of Basle, in whose service he had been originally distinguished, used every endeavour to procure the repeal of this ordinance. With Charles VII. he had no success; but Louis XI., partly out of blind hatred to his father's memory, partly from a delusive expectation that the pope would support the Angevin faction in Naples, repealed the Pragmatic Sanction.* This may be added to other proofs that Louis XI., even according to the measures of worldly wisdom, was not a wise politician. His people judged from better feelings; the parliament of Paris constantly refused to enregister the revocation of that favourite law, and it continued in many respects to be acted upon until the reign of Francis I.† At the States-General of Tours, in 1484, the inferior clergy, seconded by the two other orders, earnestly requested that the Pragmatic Sanction might be confirmed; but the prelates were timid or corrupt, and the Regent Anne was unwilling to risk a quarrel with the Holy See.‡ This unsettled state continued, the Pragmatic Sanction neither quite enforced nor quite repealed, till Francis I., having accommodated the differences of his predecessor with Rome, agreed upon a final concordat with Leo X., the treaty that subsisted for almost three centuries between the papacy and the kingdom of France.§ Instead of capitular election or papal provision, a new method was devised for filling the vacancies of episcopal sees. The king was to nominate a fit person, whom the pope was to collate. The one obtained an essential patronage, the other preserved his theoretical supremacy. Annates were restored to the pope; a concession of great importance. He gave up his indefinite prerogative of reserving benefices, and received only a small stipulated patronage. This convention met with strenuous opposition in France; the parliament of Paris yielded only to force; the university hardly stopped short of sedition; the zealous Gallicans have ever since deplored it as a fatal wound to their liberties. There is much exaggeration in this, as far as the relation of the Gallican church to Rome is concerned; but the royal nomination to bishoprics impaired of course the independence of the hierarchy. Whether this prerogative of the crown were upon the whole beneficial to France, is a problem that I cannot affect to solve; in this country there seems little doubt that capitular elections, which the statute of Henry VIII. had reduced to a name, would long since have degenerated into the corruption of close boroughs; but the circumstances of the Gallican establishment may not have been entirely similar, and the question opens a variety of considerations that do not belong to my present subject.

From the principles established during the schism, and in the Pragmatic Sanction of Bourges, arose the far-famed liberties of the Gallican church, which honourably distinguished her from other members of the Roman communion. These have been referred by French writers to a much earlier era; but, except so far as that country participated in the ancient ecclesiastical independence of all Europe, before the papal encroachments had subverted it, I do not see that they can be properly traced above the fifteenth century. Nor had they acquired, even at the expiration of that age, the precision and consistency which was given in later times by the constant spirit of the parliaments and universities, as well as by the best ecclesiastical authors, with little assistance from the crown, which, except in a few periods of disagreement with Rome, has rather been disposed to restrain the more zealous Gallicans. These liberties, therefore, do not strictly fall within my limits; and it will be sufficient to observe that they depended upon two maxims; one, that the pope does not possess any direct or indirect temporal authority; the other, that his spiritual jurisdiction can only be exercised in conformity with such parts of the canon law as are received by the kingdom of France. Hence the Gallican church rejected a great part of the Sext and Clementines, and paid little regard to modern papal bulls, which in fact obtained validity only by the king's approbation.*

Liberties of the Gallican church.

* Villaret and Garnier, t. xvi. Crevier, t. iv., p. 256, 274.

† Garnier, t. xvi., p. 432; t. xvii., p. 222, et alibi. Crevier, t. iv., p. 318, et alibi.

‡ Garnier, t. xix., p. 216 and 321.

§ Idem, t. xxiii., p. 151. Hist. du Droit Public Eccles. Fr., t. ii., p. 243 Fleury Institutions au Droit, t. ., p. 107

* Fleury, Institutions au Droit, t. ii., p. 226, &c. and Discours sur les Libertés de l'Eglise Gallicane. The last editors of this dissertation go fa

Ecclesiastical jurisdiction restrained.

The pontifical usurpations which were thus restrained, affected, at least in their direct operation, rather the church than the state, and temporal governments would only have been half emancipated, if their national hierarchies had preserved their enormous jurisdiction.* England, in this also, began the work, and had made a considerable progress, while the mistaken piety or policy of Louis IX. and his successors had laid France open to vast encroachments. The first method adopted in order to check them was rude enough; by seizing the bishop's effects when he exceeded his jurisdiction.† This jurisdiction, according to the construction of churchmen, became perpetually larger: even the reforming council of Constance give an enumeration of ecclesiastical causes far beyond the limits acknowledged in England, or perhaps in France.‡ But the parliament of Paris, instituted in 1304, gradually established a paramount authority over ecclesiastical as well as civil tribunals. Their progress was indeed very slow. At a famous assembly in 1329 before Philip of Valois, his advocate-general, Peter de Cugnieres, pronounced a long harangue against the excesses of spiritual jurisdiction. This is a curious illustration of that branch of legal and ecclesiastical history. It was answered at large by some bishops, and the king did not venture to take any active measures at that time.* Several regulations were however made in the fourteenth century, which took away the ecclesiastical cognizance of adultery, of the execution of testaments, and other causes which had been claimed by the clergy.† Their immunity in criminal matters was straitened by the introduction of privileged cases, to which it did not extend; such as treason, murder, robbery, and other heinous offences.‡ The parliament began to exercise a judicial control over episcopal courts. It was not, however, till the beginning of the sixteenth century, according to the best writers, that it devised its famous form of procedure, the appeal because of abuse.§ This, in the course of time, and through the decline of ecclesiastical power, not only proved an effectual barrier against encroachments of spiritual jurisdiction, but drew back again to the lay court the greater part of those causes which by prescription, and indeed by law, had appertained to a different cognizance. Thus testamentary, and even in a great degree matrimonial causes were decided by the parliament; and in many other matters, that body, being the judge of its own competence, narrowed by means of the appeal because of abuse, the boundaries of the opposite jurisdiction.‖ This remedial process appears to have been more extensively applied than our English writ of prohibition. The latter merely restrains the interference of the ecclesiastical courts in matters which the law has not committed to them. But the parliament of Paris considered itself, I apprehend, as conservator of the liberties and discipline of the Gallican church; and interposed the appeal because of abuse, whenever the spiritual court, even in its proper province, transgressed the canonical rules by which it ought to be governed.¶

beyond Fleury, and perhaps reach the utmost point in limiting the papal authority which a sincere member of that communion can attain.—See notes, p. 417 and 445.

* It ought always to be remembered, that *ecclesiastical*, and not merely *papal*, encroachments are what civil governments and the laity in general have had to resist; a point which some very zealous opposers of Rome have been willing to keep out of sight. The latter arose out of the former, and, perhaps, were in some respects less objectionable. But the true enemy is what are called High-church principles; be they maintained by a pope, bishop, or a presbyter. Thus Archbishop Stratford writes to Edward III.: Duo sunt, quibus principaliter regitur mundus, sacra pontificalis auctoritas, et regalis ordinata potestas: in quibus est pondus tanto gravius et sublimius sacerdotum, quanto et de regibus illi in divino reddituri sunt examine rationem: et ideo scire debet regia celsitudo ex illorum vos dependere judicio, non illos ad vestram dirigi posse voluntatem.—Wilkins, Concilia, t. ii., p. 663. This amazing impudence towards such a prince as Edward did not succeed; but it is interesting to follow the track of the star which was now rather receding, though still fierce.

† De Marca, De Concordantiâ, l. iv., c. 18.

‡ Id., c. 15. Lenfant, Conc. de Constance, t. ii., p. 331. De Marca, l. iv., c. 15, gives us passages from one Durandus, about 1309, complaining that the lay judges invaded ecclesiastical jurisdiction, and reckoning the cases subject to the latter, under which he includes feudal and criminal causes in some circumstances, and also those in which the temporal judges are in doubt si quid ambiguum inter judices sæculares oriatur.

* Velly, t. viii., p. 234. Fleury, Institutions, t. ii., p. 12. Hist. du Droit Ecclés. Franç., t. ii., p. 86.

† Villaret, t. xi., p. 182.

‡ Fleury, Institutions au Droit, t. ii., p. 138. In the famous case of Balue, a bishop and cardinal whom Louis XI. detected in a treasonable intrigue it was contended by the king that he had a right to punish him capitally.—Du Clos, Vie de Louis XI., t. i., p. 422. Garnier, Hist. de France, t. xvii., p. 330. Balue was confined for many years in a small iron cage, which till lately was shown in the castle of Loches.

§ Pasquier, l. iii., c. 33. Hist. du Droit Ecclés. François, t. ii., p. 119. Fleury, Institutions au Droit Ecclés. François, t. ii., p. 221. De Marca, De Concordantiâ Sacerdotii et Imperii, l. iv., c. 19. The last author seems to carry it rather higher.

‖ Fleury, Institutions, t. ii., p. 42, &c.

¶ De Marca, De Concordantiâ, l. iv., c. 9. Fleu

Decline of Papal influence in Italy.

While the bishops of Rome were losing their general influence over Europe, they did not gain more estimation in Italy. It is indeed a problem of some difficulty, whether they derived any substantial advantage from their temporal principality. For the last three centuries, it has certainly been conducive to the maintenance of their spiritual supremacy, which, in the complicated relations of policy, might have been endangered by their becoming the subjects of any particular sovereign. But I doubt whether their real authority over Christendom in the middle ages was not better preserved by a state of nominal dependance upon the empire, without much effective control on one side, or many temptations to worldly ambition on the other. That covetousness of temporal sway which, having long prompted their measures of usurpation and forgery, seemed, from the time of Innocent III. and Nicolas III., to reap its gratification, impaired the more essential parts of the papal authority. In the fourteenth and fifteenth centuries, the popes degraded their character by too much anxiety about the politics of Italy. The veil woven by religious awe was rent asunder, and the features of ordinary ambition appeared without disguise. For it was no longer that magnificent and original system of spiritual power, which made Gregory VII., even in exile, a rival of the emperor, which held forth redress where the law could not protect, and punishment where it could not chastise, which fell in sometimes with superstitious feeling, and sometimes with political interest. Many might believe that the pope could depose a schismatic prince, who were disgusted at his attacking an unoffending neighbour. As the cupidity of the clergy in regard to worldly estate had lowered their character everywhere, so the similar conduct of their head undermined the respect felt for him in Italy. The censures of the church, those excommunications and interdicts which had made Europe tremble, became gradually despicable as well as odious, when they were lavished in every squabble for territory which the pope was pleased to make his own.* Even the crusades, which had already been tried against the heretics of Languedoc, were now preached against all who espoused a different party from the Roman see in the quarrels of Italy. Such were those directed at Frederick II., at Manfred, and at Matteo Visconti, accompanied by the usual bribery, indulgences and remission of sins. The papal interdicts of the fourteenth century wore a different complexion from those of former times. Though tremendous to the imagination, they had hitherto been confined to spiritual effects, or to such as were connected with religion, as the prohibition of marriage and sepulture. But Clement V., on account of an attack made by the Venetians upon Ferrara, in 1309, proclaimed the whole people infamous, and incapable for three generations of any office; their goods, in every part of the world, subject to confiscation, and every Venetian, wherever he might be found, liable to be reduced into slavery.* A bull in the same terms was published by Gregory XI., in 1376, against the Florentines.

From the termination of the schism, as the popes found their ambition thwarted beyond the Alps, it was diverted more and more towards schemes of temporal sovereignty. In these we do not perceive that consistent policy, which remarkably actuated their conduct as supreme heads of the church. Men generally advanced in years, and born of noble Italian families, made the papacy subservient to the elevation of their kindred, or to the interests of a local faction. For such ends they mingled in the dark conspiracies of that bad age, distinguished only by the more scandalous turpitude of their vices from the petty tyrants and intriguers with whom they were engaged. In the latter part of the fifteenth century, when all favourable prejudices were worn away, those who occupied the most conspicuous station in Europe disgraced their name by more notorious profligacy than could be paralleled in the darkest age that had preceded, and at the moment beyond which this work is not carried, the invasion of Italy by Charles VIII., I must leave the pontifical throne in the possession of Alexander VI.

It has been my object in the present

ry, t. ii., p. 224. In Spain, even now, says De Marca, bishops or clerks not obeying royal mandates that inhibit the excesses of ecclesiastical courts, are expelled from the kingdom and deprived of the rights of denizenship.

* In 1290, Pisa was put under an interdict for having conferred the signiory on the Count of Montefeltro, and he was ordered, on pain of excommunication, to lay down the government within a month.—Muratori ad ann. A curious style for the pope to adopt towards a free city! Six years before the Venetians had been interdicted, because they would not allow their galleys to be hired by the King of Naples. But it would be almost endless to quote every instance.

* Muratori

chapter to bring within the compass of a few hours' perusal the substance of a great and interesting branch of history; not certainly with such extensive reach of learning as the subject might require, but from sources of unquestioned credibility. Unconscious of any partialities that could give an oblique bias to my mind, I have not been very solicitous to avoid offence where offence is so easily taken. Yet there is one misinterpretation of my meaning which I would gladly obviate. I have not designed, in exhibiting without disguise the usurpations of Rome during the middle ages, to furnish materials for unjust prejudice or unfounded distrust. It is an advantageous circumstance for the philosophical inquirer into the history of ecclesiastical dominion that, as it spreads itself over the vas extent of fifteen centuries, the dependance of events upon general causes, rather than on transitory combinations or the character of individuals, is made more evident, and the future more probably foretold from a consideration of the past, than we are apt to find in political history. Five centuries have now elapsed, during every one of which the authority of the Roman see has successively declined. Slowly and silently receding from their claims to temporal power, the pontiffs hardly protect their dilapidated citadel from the revolutionary concussions of modern times, the rapacity of governments, and the growing averseness to ecclesiastical influence. But, if thus bearded by unmannerly and threatening innovation, they should occasionally forget that cautious policy which necessity has prescribed, if they should attempt, an unavailing expedient! to revive institutions which can be no longer operative, or principles that have died away, their defensive efforts will not be unnatural, nor ought to excite either indignation or alarm. A calm, comprehensive study of ecclesiastical history, not in such scraps and fragments as the ordinary partisans of our ephemeral literature obtrude upon us, is perhaps the best antidote to extravagant apprehensions. Those who know what Rome has once been are best able to appreciate what she is; those who have seen the thunderbolt in the hands of the Gregories and the Innocents, will hardly be intimidated at the sallies of decrepitude, the impotent dart of Priam amid the crackling ruins of Troy.

CHAPTER VIII.

THE CONSTITUTIONAL HISTORY OF ENGLAND.

PART I.

The Anglo-Saxon Constitution.—Sketch of Anglo-Saxon History.—Succession to the Crown.—Orders of Men.—Thanes and Ceorls.—Witenagemot.—Judicial System.—Division into Hundreds.—County-Court.—Trial by Jury—its Antiquity investigated.—Law of Frank-pledge—its several Stages.—Question of Feudal Tenures before the Conquest.

No unbiased observer, who derives pleasure from the welfare of his species, can fail to consider the long and uninterruptedly increasing prosperity of England as the most beautiful phenomenon in the history of mankind. Climates more propitious may impart more largely the mere enjoyments of existence; but in no other region have the benefits that political institutions can confer been diffused over so extended a population; nor have any people so well reconciled the discordant elements of wealth, order, and liberty. These advantages are surely not owing to the soil of this island, nor to the latitude in which it is placed; but to the spirit of its laws, from which, through various means, the characteristic independence and industriousness of our nation have been derived. The constitution, therefore, of England must be to inquisitive men of all countries, far more to ourselves, an object of superior interest; distinguished especially, as it is from all free governments of powerful nations which history has recorded, by its manifesting, after the lapse of several centuries, not merely no symptom of irretrievable decay, but a more expansive energy. Comparing long periods of time, it may be justly asserted that the administration of government has progressively become more equitable, and the privileges of the subject more secure; and, though it would be both presumptuous and unwise to express an unlimited confidence as to the durability of liber-

ies which owe their greatest security to the constant suspicion of the people, yet, if we calmly reflect on the present aspect of this country, it will probably appear that whatever perils may threaten our constitution are rather from circumstances altogether unconnected with it than from any intrinsic defects of its own. It will be the object of the ensuing chapter to trace the gradual formation of this system of government. Such an investigation, impartially conducted, will detect errors diametrically opposite; those intended to impose on the populace, which, on account of their palpable absurdity and the ill faith with which they are usually proposed, I have seldom thought it worth while directly to repel; and those which better informed persons are apt to entertain, caught from transient reading and the misrepresentations of late historians, but easily refuted by the genuine testimony of ancient times.

Sketch of Anglo-Saxon history.

The seven very unequal kingdoms of the Saxon Heptarchy, formed successively out of the countries wrested from the Britons, were originally independent of each other. Several times, however, a powerful sovereign acquired a preponderating influence over his neighbours, marked perhaps by the payment of tribute. Seven are enumerated by Bede as having thus reigned over the whole of Britain; an expression which must be very loosely interpreted. Three kingdoms became at length predominant; those of Wessex, Mercia, and Northumberland. The first rendered tributary the small estates of the Southeast, and the second that of the Eastern Angles. But Egbert, king of Wessex, not only incorporated with his own monarchy the dependant kingdoms of Kent and Essex, but obtained an acknowledgment of his superiority from Mercia and Northumberland; the latter of which, though the most extensive of any Anglo-Saxon state, was too much weakened by its internal divisions to offer any resistance.* Still, however, the kingdoms of Mercia, East Anglia, and Northumberland remained under their ancient line of sovereigns; nor did either Egbert or his five immediate successors assume the title of any other crown than Wessex.†

The destruction of those minor states was reserved for a different enemy. About the end of the eighth century the northern pirates began to ravage the coast of England. Scandinavia exhibited in that age a very singular condition of society. Her population, continually redundant in those barren regions which gave it birth, was cast out in search of plunder upon the ocean. Those who loved riot rather than famine embarked in large armaments under chiefs of legitimate authority, as well as approved valour. Such were the sea-kings, renowned in the stories of the North; the younger branches commonly of royal families, who inherited, as it were, the sea for their patrimony. Without any territory but on the bosom of the waves, without any dwelling but their ships, these princely pirates were obeyed by numerous subjects, and intimidated mighty nations.* Their invasions of England became continually more formidable; and, as their confidence increased, they began first to winter, and ultimately to form permanent settlements in the country. By their command of the sea, it was easy for them to harass every part of an island presenting such an extent of coast as Britain; the Saxons, after a brave resistance, gradually gave way, and were on the brink of the same servitude or extermination which their own arms had already brought upon the ancient possessors.

From this imminent peril, after the three dependant kingdoms, Mercia, Northumberland, and East Anglia, had been overwhelmed, it was the glory of Alfred to rescue the Anglo-Saxon monarchy. Nothing less than the appearance of a hero so undesponding, so enterprising, and so just, could have prevented the entire conquest of England. Yet he never subdued the Danes, nor became master of the whole kingdom. The Thames, the Lea, the Ouse, and the Roman road called Watling-street, determined the limits of Alfred's dominion.† To the northeast of this boundary were spread the invaders, still denominated the *armies* of East Anglia and Northumberland;‡ a name terribly expressive of foreign conquerors, who retained their warlike confederacy without melting into the mass

* Chronicon Saxonicum, p. 70.

† Alfred denominates himself in his will, Occidentalium Saxorum rex; and Asserius never gives him any other name. But his son Edward the Elder takes the title of Rex Anglorum on his coins.—Vid. Numismata Anglo-Saxon. in Hickes's Thesaurus, vol ii.

* For these Vikingr, or sea-kings, a new and interesting subject, I would refer to Mr. Turner's History of the Anglo-Saxons, in which valuable work almost every particular that can illustrate our early annals will be found.

† Wilkins, Leges Anglo-Saxon., p. 47 Chron Saxon., p. 99.

‡ Chronicon Saxon., passim.

of their subject population. Three able and active sovereigns, Edward, Athelstan, and Edmund, the successors of Alfred, pursued the course of victory, and finally rendered the English monarchy coextensive with the present limits of England. Yet even Edgar, the most powerful of the Anglo-Saxon kings, did not venture to interfere with the legal customs of his Danish subjects.*

Under this prince, whose rare fortune as well as judicious conduct procured him the surname of Peaceable, the kingdom appears to have reached its zenith of prosperity. But his premature death changed the scene. The minority and feeble character of Ethelred II. provoked fresh incursions of our enemies beyond the German Sea. A long series of disasters, and the inexplicable treason of those to whom the public safety was intrusted, overthrew the Saxon line, and established Canute of Denmark upon the throne.

The character of the Scandinavian nations was in some measure changed from what it had been during their first invasions. They had embraced the Christian faith; they were consolidated into great kingdoms; they had lost some of that predatory and ferocious spirit which a religion, invented, as it seemed, for pirates, had stimulated. Those too who had long been settled in England became gradually more assimilated to the natives, whose laws and language were not radically different from their own. Hence the accession of a Danish line of kings produced neither any evil nor any sensible change of polity. But the English still outnumbered their conquerors, and eagerly returned, when an opportunity arrived, to the ancient stock. Edward the Confessor, notwithstanding his Norman favourites, was endeared by the mildness of his character to the English nation; and subsequent miseries gave a kind of posthumous credit to a reign not eminent either for good fortune or wise government.

Succession to the crown.

In a stage of civilization so little advanced as that of the Anglo-Saxons, and under circumstances of such incessant peril, the fortunes of a nation chiefly depend upon the wisdom and valour of its sovereigns. No free people, therefore, would intrust their safety to blind chance, and permit a uniform observance of hereditary succession to prevail against strong public expediency. Accordingly the Saxons, like most other European nations, while they limited the inheritance of the crown exclusively to one royal family, were not very scrupulous about its devolution upon the nearest heir. It is an unwarranted assertion of Carte, that the rule of the Anglo-Saxon monarchy was "lineal agnatic succession, the blood of the second son having no right until the extinction of that of the eldest."* Unquestionably the eldest son of the last king, being of full age, and not manifestly incompetent, was his natural and probable successor; nor is it perhaps certain that he always waited for an election to take upon himself the rights of sovereignty; although the ceremony of coronation, according to the ancient form, appears to imply its necessity. But the public security in those times was thought incompatible with a minor king; and the artificial substitution of a regency, which stricter notions of hereditary right have introduced, had never occurred to so rude a people. Thus, not to mention those instances which the obscure times of the Heptarchy exhibit, Ethelred I., as some say, but certainly Alfred, excluded the progeny of their elder brother from the throne.† Alfred, in his testament, dilates upon his own title, which he builds upon a triple foundation, the will of his father, the compact of his brother Ethelred, and the consent of the West Saxon nobility.‡ A similar objection to the government of an infant seems to have rendered Athelstan, notwithstanding his reputed illegitimacy, the public choice upon the death of Edward the Elder. Thus, too, the sons of Edmund I. were postponed to their uncle Edred, and again preferred to his issue. And happy might it have been for England if this exclusion of infants had always obtained. But upon the death of Edgar, the royal family wanted some prince of mature years to prevent the crown from resting upon the head of a child;§ and hence the

* Wilkins, Leges Anglo-Saxon., p. 83. In 1064, after a revolt of the Northumbrians, Edward the Confessor renewed the laws of Canute.—Chronic. Saxon. It seems now to be ascertained by the comparison of dialects, that the inhabitants from the Humber, or at least the Tyne, to the Firth of Forth, were chiefly Danes

* Vol. i., p. 365. Blackstone has laboured to prove the same proposition; but his knowledge of English history was rather superficial.

† Chronicon Saxon., p. 99. Hume says that Ethelwald, who attempted to raise an insurrection against Edward the Elder, was son of Ethelbert The Saxon Chronicle only calls him the king's cousin; which he would be as the son of Ethelred

‡ Spelman, Vita Alfredi, Appendix.

§ According to the historian of Ramsey, a sort of interregnum took place on Edgar's death; his

minorities of Edward II. and Ethelred II., led to misfortunes which overwhelmed for a time both the house of Cerdic and the English nation.

Influence of provincial governors.

The Anglo-Saxon monarchy, during its earlier period, seems to have suffered but little from that insubordination among the superior nobility, which ended in dismembering the empire of Charlemagne. Such kings as Alfred and Athelstan were not likely to permit it. And the English counties, each under its own alderman, were not of a size to encourage the usurpations of their governors. But when the whole kingdom was subdued, there arose unfortunately a fashion of intrusting great provinces to the administration of a single earl. Notwithstanding their union, Mercia, Northumberland, and East Anglia were regarded in some degree as distinct parts of the monarchy. A difference of laws, though probably but slight, kept up this separation. Alfred governed Mercia by the hands of a nobleman who had married his daughter Ethelfleda; and that lady, after her husband's death, held the reins with a masculine energy till her own, when her brother Edward took the province into his immediate command.* But from the era of Edward II.'s accession, the provincial governors began to overpower the royal authority, as they had done upon the continent. England, under this prince, was not far removed from the condition of France under Charles the Bald. In the time of Edward the Confessor, the whole kingdom seems to have been divided among five earls,† three of whom were Godwin and his sons Harold and Tostig. It cannot be wondered at that the royal line was soon supplanted by the most powerful and popular of these leaders, a prince well worthy to have founded a new dynasty, if his eminent qualities had not yielded to those of a still more illustrious enemy.

Distribution into Thanes and Ceorls.

There were but two denominations of persons above the class of servitude, Thanes and Ceorls; the owners and the cultivators of land, or rather, perhaps, as a more accurate distinction, the gentry and the inferior people. Among all the northern nations, as is well known, the weregild, or compensation for murder, was the standard measure of the gradations of society. In the Anglo-Saxon laws we find two ranks of freeholders; the first, called king's thanes, whose lives were valued at 1200 shillings; the second, of inferior degree, whose composition was half that sum.* That of a ceorl was 200 shillings. The nature of this distinction between royal and lesser thanes is very obscure; and I shall have something more to say of it presently. However, the thanes in general, or Anglo-Saxon gentry, must have been very numerous. A law of Ethelred directs the sheriff to take twelve of the chief thanes in every hundred as his assessors on the bench of justice.† And from Domesday Book we may collect that they had formed a pretty large class, at least in some counties, under Edward the Confessor.‡

Condition of the ceorls

The composition for the life of a ceorl was, as has been said, 200 shillings. If this proportion to the value of a thane points out the subordination of ranks, it certainly does not exhibit the lower freemen in a state of complete abasement. The ceorl was not bound, as far as appears, to the land which he cultivated;◊ he was occasionally called upon to bear arms for the public safety;‖ he was protected against personal injuries, or trespasses on his land;¶ he was capable of property, and of the privileges which it conferred. If he came to possess five hydes of land (or about 600 acres), with a church and mansion of his own, he was entitled to the name and rights of a thane.** I am, however, inclined to suspect, that the ceorl were sliding more and more towards a state of servitude before the conquest.†† The natural tendency of such times of

son's birth not being thought sufficient to give him a clear right during infancy.—3 Gale, xv. Script., p. 413.

* Chronicon Saxon.

† The word earl (eorl) meant originally a man of noble birth, as opposed to the ceorl. It was not a title of office till the eleventh century, when it was used as synonymous to alderman, for a governor of a county or province. After the conquest, it superseded altogether the ancient title.—Selden's Titles of Honour, vol. iii., p. 638 (edit. Wilkins), and Anglo-Saxon writings passim.

* Wilkins, p. 40, 43, 64, 72, 101.

† Idem, p. 117.

‡ Domesday Book having been compiled by different sets of commissioners, their language has sometimes varied in describing the same class of persons. The *liberi homines*, of whom we find continual mention in some counties, were perhaps not different from the *thaini*, who occur in other places. But this subject is very obscure; and a clear apprehension of the classes of society mentioned in Domesday seems at present unattainable.

◊ Leges Alfredi, c. 33, in Wilkins. This text is not unequivocal; and I confess that a law of Ina (c. 39) has rather a contrary appearance.

‖ Leges Inæ, c. 51, ibid.

¶ Leges Alfredi, c. 31, 35.

** Leges Athelstani, ibid., p. 70, 71.

†† If the laws that bear the name of William are as is generally supposed those of his predecessor

rapine, with the analogy of a similar change in France, leads to this conjecture. And as it was part of those singular regulations which were devised for the preservation of internal peace, that every man should be enrolled in some tithing, and be dependant upon some lord, it was not very easy for the ceorl to exercise the privilege (if he possessed it) of quitting the soil upon which he lived.

Notwithstanding this, I doubt whether it can be proved by any authority earlier than that of Glanvil, whose treatise was written about 1180, that the peasantry of England were reduced to that extreme debasement which our law-books call villanage, a condition which left them no civil rights with respect to their lord. For, by the laws of William the Conqueror, there was still a composition fixed for the murder of a villein or ceorl, the strongest proof of his being, as it was called, law-worthy, and possessing a rank, however subordinate, in political society. And this composition was due to his kindred, not to the lord.* Indeed, it seems positively declared in another passage, that the cultivators, though bound to remain upon the land, were only subject to certain services.† Again, the treatise denominated the Laws of Henry I., which, though not deserving that appellation, must be considered as a contemporary document, expressly mentions the twyhinder or villein as a freeman.‡ Nobody can doubt that the *villani* and *bordarii* of Domesday Book, who are always distinguished from the serfs of the demesne, were the ceorls of Anglo-Saxon law.§ And I presume that the socmen, who so frequently occur in that record, though far more in some counties than in others, were ceorls more fortunate than the rest, who by purchase had acquired freeholds, or by prescription and the indulgence of their lords had obtained such a property in the outlands allotted to them that they could not be removed, and in many instances might dispose of them at pleasure. They are the root of a noble plant, the free soccage tenants, or English yeomanry, whose independence has stamped with peculiar features both our constitution and our national character.

Beneath the ceorls in political estimation were the conquered natives of Britain. In a war so long and so obstinately maintained as that of the Britons against their invaders, it is natural to conclude, that in a great part of the country the original inhabitants were almost extirpated, and that the remainder were reduced into servitude. This, till lately, has been the concurrent opinion of our antiquaries; and with some qualification, I do not see why it should not still be received. In every kingdom of the continent, which was formed by the northern nations of the Roman empire, the Latin language preserved its superiority, and has much more been corrupted through ignorance and want of a standard, than intermingled with their original idiom. But our own language is, and has been from the earliest times after the Saxon conquest, essentially Teutonic, and of the most obvious affinity to those dialects which are spoken in Denmark and Lower Saxony. With such as are extravagant enough to controvert so evident a truth, it is idle to contend; and those who believe great part of our language to be borrowed from the Welsh may doubtless infer that great part of our population is derived from the same source. If we look through the subsisting Anglo-Saxon records, there is not very frequent mention of British subjects. But some undoubtedly there were in a state of freedom, and possessed of landed estate. A Welshman (that is, a Briton), who held five hydes, was raised, like a ceorl, to the dignity of thane.* In the composition, however, for their lives, and consequently in their rank in society, they were inferior to the meanest Saxon freeman. The slaves, who were frequently the objects of legislation, rather for the purpose of ascertaining their punishments than of securing their rights, may be presumed, at least in early times, to have been part of the conquered Britons. For though his own crimes, or the tyranny of others, might possibly reduce a Saxon ceorl to this condition,† it is inconceivable that the lowest of those who won England with their swords should in the establishment of the new kingdoms have been left destitute of personal liberty.

British natives

Slaves

The great council by which an Anglo Saxon king was guided in all the main acts of government bore the appellation of Wittenagemot, or the assembly of the wise men. All their laws express the assent of this council

The Witten agemot.

Edward, they were already annexed to the soil, p. 225.

* Wilkins, p. 221. † Ibid., p. 225.
‡ Leges Henr. I., c. 70 and 76, in Wilkins.
§ Somner on Gavelkind, p. 74.

* Leges Inæ, p. 18. Leg. Athelst. p. 71
† Leges Inæ, c. 24

and there are instances where grants made without its concurrence have been revoked. It was composed of prelates and abbots, of the aldermen of shires, and, as it is generally expressed, of the noble and wise men of the kingdom.* Whether the lesser thanes, or inferior proprietors of lands, were entitled to a place in the national council, as they certainly were in the shiregemot, or county-court, is not easily to be decided. Many writers have concluded from a passage in the History of Ely, that no one, however nobly born, could sit in the witenagemot, so late at least as the reign of Edward the Confessor, unless he possessed forty hydes of land, or about five thousand acres.† But the passage in question does not unequivocally relate to the witenagemot; and being vaguely worded by an ignorant monk, who perhaps had never gone beyond his fens, ought not to be assumed as an incontrovertible testimony. Certainly so very high a qualification cannot be supposed to have been requisite in the kingdoms of the Heptarchy; nor do we find any collateral evidence to confirm the hypothesis. If, however, all the body of thanes or freeholders were admissible to the witenagemot, it is unlikely that the privilege should have been fully exercised. Very few, I believe, at present, imagine that there was any representative system in that age; much less that the ceorls or inferior freemen had the smallest share in the deliberations of the national assembly. Every argument which a spirit of controversy once pressed into this service, has long since been victoriously refuted.

It has been justly remarked by Hume, that among a people who lived in so simple a manner as these Anglo-Saxons, the judicial power is always of more consequence than the legislative. The liberties of these Anglo-Saxon thanes were chiefly secured, next to their swords and their free spirits, by the inestimable right of deciding civil and criminal suits in their own county-court; an institution which, having survived the Conquest, and contributed in no small degree to fix the liberties of England upon a broad and popular basis, by limiting the feudal aristocracy, deserves attention in following the history of the British constitution.

Judicial power.

The division of the kingdom into counties, and of these into hundreds and decemnaries, for the purpose of administering justice, was not peculiar to England. In the early laws of France and Lombardy, frequent mention is made of the hundred court, and now and then of those petty village magistrates, who in England were called tithing-men. It has been usual to ascribe the establishment of this system among our Saxon ancestors to Alfred, upon the authority of Ingulfus, a writer contemporary with the Conquest. But neither the biographer of Alfred, Asserius, nor the existing laws of that prince, bear testimony to the fact. With respect indeed to the division of counties, and their government by aldermen and sheriffs, it is certain that both existed long before his time;* and the utmost that can be supposed is that he might in some instances have ascertained an unsettled boundary. There does not seem to be equal evidence as to the antiquity of the minor divisions. Hundreds, I think, are first mentioned in a law of Edgar, and tithings in one of Canute.† But as Alfred, it must be remembered, was never master of more than half the kingdom, the complete distribution of England into these districts cannot, upon any supposition, be referred to him.

Division into counties, hundreds, and tithings

There is, indeed, a circumstance observable in this division which seems to indicate that it could not have taken place at one time, nor upon one system; I mean, the extreme inequality of hundreds in different parts of England. Whether the name be conceived to refer to the number of free families, or of landholders, or of petty vills, forming so many associations of mutual assurance or frankpledge, one can hardly doubt that, when the term was first applied, a hundred of one or other of these were comprised, at an average reckoning, within the district. But it is impossible to reconcile the varying size of hundreds to any single hypothesis. The county of Sussex contains sixty-five; that of Dorset forty-three, while Yorkshire has only twenty-six; and Lancashire but six. No difference of population, though the south of England was undoubtedly far the best peopled, can be conceived to account for so prodigious a disparity. I know of no better solution than that the divisions of the

* Leges Anglo-Saxon., in Wilkins, passim.

† Quoniam ille quadraginta hydarum terræ dominium minimè obtineret, licet nobilis esset, inter proceres tunc numerari non potuit.—3 Gale, Scriptores, p. 513.

* Counties, as well as the alderman who presided over them, are mentioned in the laws of Ina, c. 36.

† Wilkins, p. 87, 136. The former, however refers to them as an ancient institution: quæratur centuriæ conventus, sicut antea institutum erat

north, properly called wapentakes,* were planned upon a different system, and obtained the denomination of hundreds incorrectly, after the union of all England under a single sovereign.

Assuming, therefore, the name and partition of hundreds to have originated in the southern counties, it will rather, I think, appear probable, that they contained only a hundred free families, including the ceorls as well as their landlords. If we suppose none but the latter to have been numbered, we should find six thousand thanes in Kent, and six thousand five hundred in Sussex; a reckoning totally inconsistent with any probable estimate.† But though we have little direct testimony as to the population of those times, there is one passage which falls in very sufficiently with the former supposition. Bede says that the kingdom of the South Saxons, comprehending Surrey as well as Sussex, contained seven thousand families. The county of Sussex alone is divided into sixty-five hundreds, which comes at least close enough to prove that free families, rather than proprietors, were the subject of that numeration. And this is the interpretation of Du Cange and Muratori, as to the Centenæ and Decaniæ of their own ancient laws.

I cannot but feel some doubt, notwithstanding a passage in the laws ascribed to Edward the Confessor,‡ whether the tithing-man ever possessed any judicial magistracy over his small district. He was, more probably, little different from a petty constable, as is now the case, I believe, wherever that denomination of office is preserved. The court of the hundred, not held, as on the continent, by its own centenarius, but by the sheriff of the county, is frequently mentioned in the later Anglo-Saxon laws. It was, however, to the county-court that an English freeman chiefly looked for the maintenance of his civil rights. In this assembly, held monthly, or at least more than once in the year (for there seems some ambiguity or perhaps fluctuation as to this point), by the bishop and the earl, or, in his absence, the sheriff, the oath of allegiance was administered to all freemen, breaches of the peace were inquired into, crimes were investigated, and claims were determined. I assign all these functions to the county-court upon the supposition that no other subsisted during the Saxon times, and that the separation of the sheriff's tourn for criminal jurisdiction had not yet taken place, which, however, I cannot pretend to determine *

County-court.

A very ancient Saxon instrument, recording a suit in the county-court under the reign of Canute, has been published by Hickes, and may be deemed worthy of a literal translation in this place. "It is made known by this writing, that in the shiregemot (county-court) held at Agelnothes-stane (Aylston in Herefordshire), in the reign of Canute, there sat Athelstan the bishop, and Ranig the alderman, and Edwin his son, and Leofwin Wulfig's son; and Thurkil the White and Tofig came there on the king's business; and there were Bryning the sheriff, and Athelweard of Frome, and Leofwin of Frome, and Goodric of Stoke, and all the thanes of Herefordshire. Then came to the mote Edwin son of Enneawne, and sued his mother for some lands, called Weolintun and Cyrdeslea. Then the bishop asked, who would answer for his mother. Then answered Thurkil the White, and said that he would, if he knew the facts, which he did not. Then were seen in the mote three thanes, that belonged to Feligly (Fawley, five miles from Aylston), Leofwin of Frome, Ægelwig the Red, and Thinsig Stægthman; and they went to her, and inquired what she had to say about the lands which her son claimed. She said that she had no land which belonged to him, and fell into a noble passion against her son, and calling for Leofleda her kinswoman, the wife of Thurkil, thus spake to her before them:— 'This is Leofleda my kinswoman, to whom I give my lands, money, clothes, and whatever I possess after my life:' and this said, she thus spake to the thanes: 'Behave like thanes, and declare my message to all the good men in the mote, and tell them to whom I have given my lands, and all my possessions, and nothing to my son;' and bade them be witnesses to this. And thus they did, rode to the mote, and told all the good men what she had enjoined them. Then Thurkil the White addressed the mote, and requested all the thanes to let his wife have the lands which her kinswoman had given her and thus they did, and Thurkil

Suit in the county court.

* Leges Edwardi Confess., c. 33.

† It would be easy to mention particular hundreds in these counties, so small as to render this supposition quite ridiculous.

‡ Leges Edwardi Confess., p. 203. Nothing, as far as I know, confirms this passage, which hardly allies with what the genuine Anglo-Saxon documents contain as to the judicial arrangements of that period.

* This point is obscure; but I do not perceive that the Anglo-Saxon laws distinguish the civil from the criminal tribunal

rode to the church of St. Ethelbert, with the leave and witness of all the people, and had this inserted in a book in the church."*

It may be presumed from the appeal made to the thanes present at the county-court, and is confirmed by other ancient authorities,† that all of them, and they alone, to the exclusion of inferior freemen, were the judges of civil controversies. The latter indeed were called upon to attend its meetings, or, in the language of our present law, were suiters to the court, and it was penal to be absent. But this was on account of other duties, the oath of allegiance which they were to take, or the frank-pledges into which they were to enter, not in order to exercise any judicial power; unless we conceive that the disputes of the ceorls were decided by judges of their own rank. It is more important to remark the crude state of legal process and inquiry which this instrument denotes. Without any regular method of instituting or conducting causes, the county-court seems to have had nothing to recommend it but, what indeed is no trifling matter, its security from corruption and tyranny; and in the practical jurisprudence of our Saxon ancestors, even at the beginning of the eleventh century, we perceive no advance of civility and skill from the state of their own savage progenitors on the banks of the Elbe. No appeal could be made to the royal tribunal, unless justice was denied in the county-court.‡ This was the great constitutional judicature in all questions of civil right. In another instrument, published by Hickes, of the age of Ethelred II., the tenant of lands which were claimed in the king's court refused to submit to the decree of that tribunal, without a regular trial in the county; which was accordingly granted.§ There were, however, royal judges, who, either by way of appeal from the lower courts, or in excepted cases, formed a paramount judicature; but how their court was composed under the Anglo-Saxon sovereigns I do not pretend to assert.*

It had been a prevailing opinion, that trial by jury may be referred to the Anglo-Saxon age, and common tradition has ascribed it to the wisdom of Alfred. In such an historical deduction of the English government as I have attempted, an institution so peculiarly characteristic deserves every attention to its origin; and I shall therefore produce the evidence which has been supposed to bear upon this most eminent part of our judicial system. The first text of the Saxon laws which may appear to have such a meaning is in those of Alfred. "If any one accuse a king's thane of homicide, if he dare to purge himself (ladian), let him do it along with twelve king's thanes. If any one accuse a thane of less rank (læssa maga) than a king's thane, let him purge himself along with eleven of his equals, and one king's thane."† This law, which Nicholson contends can mean nothing but trial by jury, has been referred by Hickes to the ancient usage of compurgation, where the accused sustained his own oath by those of a number of his friends, who pledged their knowledge, or at least their belief of his innocence.‡

Trial by Jury.

In the canons of the Northumbrian clergy, we read as follows: "If a king's thane deny this (the practice of heathen superstitions), let twelve be appointed for him, and let him take twelve of his kindred (or equals, *maga*) and twelve British strangers; and if he fail, then let him pay for his breach of law twelve half marcs: If a landholder (or lesser thane) deny the charge, let as many of his equals and as many strangers be taken as for a royal thane; and if he fail let him pay six half-marcs: If a ceorl deny it, let as many of his equals and as many strangers be taken for him as for the others;

* Hickes, Dissertatio Epistolaris, p. 4, in Thesaurus Antiquitatum Septentrion, vol. iii. Before the conquest, says Gurdon (on Courts-Baron, p. 589), grants were enrolled in the shire-book in public shire mote, after proclamation made for any to come in that could claim the lands conveyed; and this was as irreversible as the modern fine with proclamations or recovery. This may be so; but the county-court has at least long ceased to be a court of record; and one would ask for proof of the assertion. The book kept in the church of St. Ethelbert, wherein Thurkil is said to have inserted the proceedings of the county-court, may or may not have been a public record.

† Id., p. 3. Leges Henr. Primi, c. 29.

‡ Leges Eadgari, p. 77; Canuti, p. 136; Henrici Primi, c. 34. I quote the latter freely as Anglo-Saxon, though posterior to the conquest; their spirit being perfectly of the former period.

§ Dissertatio Epistolaris, p. 5.

* Madox, History of the Exchequer, p. 65, will not admit the existence of any court analogous to the Curia Regis before the conquest; all pleas being determined in the county. There are, however, several instances of decisions before the king, and in some cases it seems that the witenagemot had a judicial authority.—Leges Canuti, p. 135, 136. Hist. Eliensis. 469. Chron. Sax., p. 169 In the Leges Henr. I., c. 10, the limits of the royal and local jurisdictions are defined as to criminal matters, and seem to have been little changed since the reign of Canute, p. 135.

† Leges Alfredi, p. 47.

‡ Nicholson, Prefatio ad Leges Anglo-Saxon Wilkinsii, p. 10. Hickes, Dissertatio Epistolaris

and if he fail, let him pay twelve oræ for his breach of law."* It is difficult at first sight to imagine that these thirty-six so selected were merely compurgators, since it seems absurd that the judge should name indifferent persons, who, without inquiry, were to make oath of a party's innocence. Some have therefore conceived, that in this and other instances where compurgators are mentioned, they were virtually jurors, who, before attesting the facts, were to inform their consciences by investigating them. There are, however, passages in the Saxon laws nearly parallel to that just quoted, which seem incompatible with this interpretation. Thus, by a law of Athelstan, if any one claimed a stray ox as his own, five of his neighbours were to be assigned, of whom one was to maintain the claimant's oath.† Perhaps the principle of these regulations, and indeed of the whole law of compurgation, is to be found in that stress laid upon general character which pervades the Anglo-Saxon jurisprudence. A man of ill reputation was compelled to undergo a triple ordeal, in cases where a single one sufficed for persons of credit; a provision rather inconsistent with the trust in a miraculous interposition of Providence which was the basis of that superstition. And the law of frank-pledge proceeded upon the maxim that the best guarantee of every man's obedience to the government was to be sought in the confidence of his neighbours. Hence, while some compurgators were to be chosen by the sheriff, to avoid partiality and collusion, it was still intended that they should be residents of the vicinage, witnesses of the defendant's previous life, and competent to estimate the probability of his exculpatory oath. For the British strangers, in the canon quoted above, were certainly the original natives, more intermingled with their conquerors, probably, in the provinces north of the Humber than elsewhere, and still denominated strangers, as the distinction of races was not done away.

If in this instance we do not feel ourselves warranted to infer the existence of trial by jury, still less shall we find even an analogy to it in an article of the treaty between England and Wales during the reign of Ethelred II. "Twelve persons skilled in the law (lahmen), six English and six Welsh, shall instruct the natives of each country, on pain of forfeiting their possessions, if except through ignorance, they give false information."* This is obviously but a regulation intended to settle disputes among the Welsh and English, to which their ignorance of each other's customs might give rise.

By a law of the same prince, a court was to be held in every wapentake, where the sheriff and twelve principal thanes should swear that they would neither acquit any criminal, nor convict any innocent person.† It seems more probable that these thanes were permanent assessors to the sheriff, like the scabini so frequently mentioned in the early laws of France and Italy, than jurors indiscriminately selected. This passage, however, is stronger than those which have been already adduced; and it may be thought, perhaps with justice, that at least the seeds of our present form of trial are discoverable in it. In the history of Ely, we twice read of pleas held before twenty-four judges in the court of Cambridge; which seems to have been formed out of several neighbouring hundreds.‡

But the nearest approach to a regular jury which has been preserved in our scanty memorials of the Anglo-Saxon age, occurs in the history of the monastery of Ramsey. A controversy relating to lands between that society and a certain nobleman was brought into the county-court; when each party was heard in his own behalf. After this commencement, on account probably of the length and difficulty of the investigation, it was referred by the court to thirty-six thanes, equally chosen by both sides.§ And here we begin to perceive the manner in which those tumultuous assemblies, the mixed body of freeholders in their county-court, slid gradually into a more steady and more diligent tribunal. But this was not the work of a single age. In the Conqueror's reign we find a proceeding very similar to the case of Ramsey, in which the suit has been commenced in the county-court, before it was found expedient to remit it to a select body of freeholders. In the reign of William Rufus, and down to that of Henry II., when the trial of writs of right by the grand assize was introduced, Hickes has discovered other instances of the original usage.‖ The language of Domes-

* Wilkins, p. 100
† Leges Athelstani, p. 58.

* Leges Ethelredi, p. 125. † P. 117.
‡ Hist. Eliensis, in Gale's Scriptores, t. iii., p. 471 and 478.
§ Hist. Ramsey, id., p. 415.
‖ Hickesii Dissertatio Epistolaris, p. 33 36.

day Book lends some confirmation to its existence at the time of that survey; and even our common legal expression of trial by the country seems to be derived from a period when the form was literally popular.

In comparing the various passages which I have quoted, it is impossible not to be struck with the preference given to twelve, or some multiple of it, in fixing the number either of juries or compurgators. This was not peculiar to England. Spelman has produced several instances of it in the early German laws. And that number seems to have been regarded with equal veneration in Scandinavia.* It is very immaterial from what caprice or superstition this predilection arose. But its general prevalence shows that, in searching for the origin of trial by jury, we cannot rely for a moment upon any analogy which the mere number affords. I am induced to make this observation, because some of the passages which have been alleged by eminent men for the purpose of establishing the existence of that institution before the conquest, seem to have little else to support them.

Law of frank-pledge.

There is certainly no part of the Anglo-Saxon polity which has attracted so much the notice of modern times as the law of frank-pledge, or mutual responsibility of the members of a tithing for each other's abiding the course of justice. This, like the distribution of hundreds and tithings themselves, and like trial by jury, has been generally attributed to Alfred; and of this, I suspect, we must also deprive him. It is not surprising that the great services of Alfred to his people in peace and in war should have led posterity to ascribe every institution, of which the beginning was obscure, to his contrivance, till his fame has become almost as fabulous in legislation as that of Arthur in arms. The English nation redeemed from servitude, and their name from extinction; the lamp of learning refreshed, when scarce a glimmer was visible; the watchful observance of justice and public order; these are the genuine praises of Alfred, and entitle him to the rank he has always held in men's esteem, as the best and greatest of English kings. But of his legislation there is little that can be asserted with sufficient evidence; the laws of his time that remain are neither numerous nor particularly interesting; and a loose report of late writers is not sufficient to prove that he compiled a dom-boc, or general code for the government of his kingdom.

An ingenious and philosophical writer has endeavoured to found the law of frank-pledge upon one of those general principles to which he always loves to recur. "If we look upon a tithing," he says, "as regularly composed of ten families, this branch of its police will appear in the highest degree artificial and singular; but if we consider that society as of the same extent with a town or village, we shall find that such a regulation is conformable to the general usage of barbarous nations, and is founded upon their common notions of justice."* A variety of instances are then brought forward, drawn from the customs of almost every part of the world, wherein the inhabitants of a district have been made answerable for crimes and injuries imputed to one of them. But none of these fully resemble the Saxon institution of which we are treating. They relate either to the right of reprisals, exercised with respect to the subjects of foreign countries, or to the indemnification exacted from the district, as in our modern statutes, which give an action in certain cases of felony against the hundred, for crimes which its internal police was supposed capable of preventing. In the Irish custom, indeed, which bound the head of a sept to bring forward every one of his kindred who should be charged with any heinous crime, we certainly perceive a strong analogy to the Saxon law, not as it latterly subsisted, but under one of its prior modifications. For I think that something of a gradual progression may be traced to the history of this famous police, by following the indications afforded by those laws through which alone we become acquainted with its existence.

The Saxons brought with them from their original forests at least as much roughness as any of the nations which overturned the Roman empire; and their long struggle with the Britons could not contribute to polish their manners. The royal authority was weak; and little had been learned of that regular system of government which the Franks and Lombards acquired from the provincial Romans, among whom they were mingled. No people were so much addicted to robbery, to riotous frays, and to feuds arising out of family revenge, as the Anglo

* Spelman's Glossary, voc. Jurata. Du Cange, voc. Nembda. Edinb. Review, vol. xxx p. 115: a most learned and elaborate essay

* Millar on the English Government, vol i. 189.

Saxons. Their statutes are filled with complaints that the public peace was openly violated, and with penalties which seem, by their repetition, to have been disregarded. The vengeance taken by the kindred of a murdered man was a sacred right which no law ventured to forbid, though it was limited by those which established a composition, and by those which protected the family of the murderer from their resentment. Even the author of the laws ascribed to the Confessor speaks of this family warfare, where the composition had not been paid, as perfectly lawful.* But the law of composition tended probably to increase the number of crimes. Though the sums imposed were sometimes heavy, men paid them with the help of their relations, or entered into voluntary associations, the purposes whereof might often be laudable, but which were certainly susceptible of this kind of abuse. And many led a life of rapine, forming large parties of ruffians, who committed murder and robbery with little dread of punishment.

Against this disorderly condition of society, the wisdom of our English kings, with the assistance of their great councils, was employed in devising remedies, which ultimately grew up into a peculiar system. No man could leave the shire to which he belonged without the permission of its alderman.† No man could be without a lord, on whom he depended; though he might quit his present patron, it was under the condition of engaging himself to another. If he failed in this, his kindred were bound to present him in the county-court, and to name a lord for him themselves. Unless this were done, he might be seized by any one who met him as a robber.‡ Hence, notwithstanding the personal liberty of the peasants, it was not very practicable for one of them to quit his place of residence. A stranger guest could not be received more than two nights as such; on the third the host became responsible for his inmate's conduct.§

The peculiar system of frank-pledges seems to have passed through the following very gradual stages. At first an accused person was obliged to find bail‖ for standing his trial. At a subsequent period his relations were called upon to become sureties for payment of the composition and other fines to which he was liable.* They were even subject to be imprisoned until payment was made, and this imprisonment was commutable for a certain sum of money. The next stage was to make persons already convicted, or of suspicious repute, give sureties for their future behaviour.† It is not till the reign of Edgar that we find the first general law, which places every man in the condition of the guilty or suspected, and compels him to find a surety, who shall be responsible for his appearance when judicially summoned.‡ This is perpetually repeated and enforced in later statutes, during his reign and that of Ethelred. Finally, the laws of Canute declare the necessity of belonging to some hundred and tithing, as well as of providing sureties;§ and it may, perhaps, be inferred, that the custom of rendering every member of a tithing answerable for the appearance of all the rest, as it existed after the conquest, is as old as the reign of this Danish monarch.

It is by no means an accurate notion which the writer to whom I have already adverted has conceived, that "the members of every tithing were responsible for the conduct of one another; and that the society, or their leader, might be prosecuted and compelled to make reparation for an injury committed by any individual." Upon this false apprehension of the nature of frank-pledges the whole of his analogical reasoning is founded. It is indeed an error very current in popular treatises, and which might plead the authority of some whose professional learning should have saved them from so obvious a misstatement. But, in fact, the members of a tithing were no more than perpetual bail for each other. "The greatest security of the public order (says the laws ascribed to the Confessor), is that every man must bind himself to one of those societies which the English in general call freeborgs, and the people of Yorkshire ten men's tale."‖ This consisted in the responsibility of ten men, each for the other, throughout every village in the kingdom; so that if one of the ten committed any fault, the nine should produce him in justice; where he should make reparation by his own prop

* Parentibus occisi fiat emendatio, vel guerra eorum portetur.—Wilkins, p. 199. This, like many other parts of that spurious treatise, appears to have been taken from some older laws, or at least traditions. I do not conceive that this private revenge was tolerated by law after the conquest.

† Leges Alfredi, c. 33.

‡ Leges Athelstani, p. 56.

§ Leges Edwardi Confess., p. 202.

‖ Leges Lotharii [Legis Canuti] p. 8.

* Leges Edwardi Senioris, p. 52

† Leges Athelstani, p. 57, c. 6, 7 8.

‡ Leges Eadgari, p. 78.

§ Leges Canuti, p. 137.

‖ Leges Edwardi, in Wilkins, p 201

erty or by personal punishment. If he fled from justice, a mode was provided, according to which the tithing might clear themselves from participation in his crime or escape; in default of such exculpation, and the malefactor's estate proving deficient, they were compelled to make good the penalty. And it is equally manifest from every other passage in which mention is made of this ancient institution, that the obligation of the tithing was merely that of permanent bail, responsible only indirectly for the good behaviour of their members.

Every freeman above the age of twelve years was required to be enrolled in some tithing.* In order to enforce this essential part of police, the courts of the tourn and leet were erected, or rather, perhaps, separated from that of the county. The periodical meetings of these, whose duty it was to inquire into the state of tithings, whence they were called the view of frank-pledge, are regulated in Magna Charta. But this custom, which seems to have been in full vigour when Bracton wrote, and is enforced by a statute of Edward II., gradually died away in succeeding times.† According to the laws ascribed to the Confessor, which are perhaps of insufficient authority to fix the existence of any usage before the conquest, lords, who possessed a baronial jurisdiction, were permitted to keep their military tenants and the servants of their household under their own peculiar frank-pledge.‡ Nor was any freeholder, in the age of Bracton, bound to be enrolled in a tithing.

Feudal tenures whether known before the conquest.

It remains only, before we conclude this sketch of the Anglo-Saxon system, to consider the once famous question respecting the establishment of feudal tenures in England before the conquest. The position asserted by Sir Henry Spelman in his Glossary, that lands were not held feudally before that period, having been denied by the Irish judges in the great case of tenures, he was compelled to draw up his treatise on feuds, in which it is more fully maintained. Several other writers, especially Hickes, Madox, and Sir Martin Wright have taken the same side. But names equally respectable might be thrown into the opposite scale; and I think the prevailing bias of modern antiquaries is in favour of at least a modified affirmative as to this question.

Lands are commonly supposed to have been divided among the Anglo-Saxons into bocland and folkland. The former was held in full propriety, and might be conveyed by boc or written grant; the latter was occupied by the common people, yielding rent or other service, and perhaps without any estate in the land, but at the pleasure of the owner. These two species of tenure might be compared to freehold and copyhold, if the latter had retained its original dependance upon the will of the lord.* Bocland was devisable by will; it was equally shared among the children; it was capable of being entailed by the person under whose grant it was originally taken; and, in case of a treacherous or cowardly desertion from the army, it was forfeited to the crown.†

It is an improbable, and even extravagant supposition, that all these hereditary estates of the Anglo-Saxon freeholders were originally parcels of the royal demesne, and consequently that the king was once the sole proprietor in his kingdom. Whatever partitions were made upon the conquest of a British province, we may be sure that the shares of the army were coeval with those of the general. The great mass of Saxon property could not have been held by actual beneficiary grants from the crown. However, the royal demesnes were undoubtedly very extensive. They continued to be so even in the time of the Confessor, after the donations of his predecessors. And several instruments granting lands to individuals, besides those in favour of the church, are extant. These are generally couched in that style of full and unconditional conveyance, which is observable in all such charters of the same

* Leges Canuti, p. 136.

† Stat. 18 E. II. Traces of the actual view of frank-pledge appear in Cornwall as late as the 10th of Henry VI., Rot. Parliam., vol. iv., p. 403. And indeed Selden tells us (Janus Anglorum, t. ii., p. 993) that it was not quite obsolete in his time. The form may, for aught I know, be kept up in some parts of England at this day. For some reason which I cannot explain, the distribution by tens was changed into one by dozens.—Britton, c. 29, and Stat. 18 E. II.

‡ P. 202.

* This supposition may plead the great authorities of Somner and Lye, the Anglo Saxon lexicographers, and appears to me far more probable than the theory of Sir John Dalrymple, in his Essay on Feudal Property, or that of the author of a discourse on the Boclan and Folkland of the Saxons 1775, whose name, I think, was Ibbetson. The first of these supposes bocland to have been feudal and folkland allodial; the second most strangely takes folkland for feudal. I cannot satisfy myself whether thainland and reveland, which occur sometimes in Domesday Book, merely correspond with the other two denominations.

† Wilkins, p. 43, 145. The latter law is copied from one of Charlemagne's Capitularies.—Baluze, p. 767.

age upon the continent. Some exceptions, however, occur; the lands bequeathed by Alfred to certain of his nobles were to return to his family in default of male heirs; and Hickes is of opinion that the royal consent, which seems to have been required for the testamentary disposition of some estates, was necessary on account of their beneficiary tenure.*

All the freehold lands of England, except some of those belonging to the church, were subject to three great public burdens; military service in the king's expeditions, or at least in defensive war,† the repair of bridges, and that of royal fortresses. These obligations, and especially the first, have been sometimes thought to denote a feudal tenure. There is, however, a confusion into which we may fall by not sufficiently discriminating the rights of a king as chief lord of his vassals, and as sovereign of his subjects. In every country, the supreme power is entitled to use the arm of each citizen in the public defence. The usage of all nations agrees with common reason in establishing this great principle. There is nothing, therefore, peculiarly feudal in this military service of landholders; it was due from the allodial proprietors upon the continent; it was derived from their German ancestors; it had been fixed, probably, by the legislatures of the Heptarchy upon the first settlement in Britain.

It is material, however, to observe, that a thane forfeited his hereditary freehold by misconduct in battle; a penalty more severe than was inflicted upon allodial proprietors on the continent. We even find in the earliest Saxon laws, that the sithcundman, who seems to have corresponded to the inferior thane of later times, forfeited his land by neglect of attendance in war; for which an allodialist in France would only have paid his heribannum, or penalty.‡ Nevertheless, as the policy of different states may enforce the duties of subjects by more or less severe sanctions, I do not know that a law of forfeiture in such cases is to be considered as positively implying a feudal tenure.

But a much stronger presumption is afforded by passages that indicate a mutual relation of lord and vassal among the free proprietors. The most powerful subjects have not a natural right to the service of other freemen. But in the laws enacted during the Heptarchy, we find it hinted that the sithcundman, or petty gentleman, might be dependant on a superior lord.* This is more distinctly expressed in some ecclesiastical canons, apparently of the tenth century, which distinguish the king's thane from the landholder, who depended upon a lord.† Other proofs of this might be brought from the Anglo-Saxon laws.‡ It is not, however, sufficient to prove a mutual relation between the higher and lower order of gentry, in order to establish the existence of feudal tenures. For this relation was often personal, as I have mentioned more fully in another place, and bore the name of commendation. And no nation was so rigorous as the English in compelling every man, from the king's thane to the ceorl, to place himself under a lawful superior. Hence the question is not to be hastily decided on the credit of a few passages that express this gradation of dependance; feudal vassalage the object of our inquiry, being of a *real*, not a *personal* nature, and resulting entirely from the tenure of particular lands. But it is not unlikely that the personal relation of client, if I may use that word might in a multitude of cases be changed into that of vassal. And certainly many of the motives which operated in France to produce a very general commutation of allodial into feudal tenure might have a similar influence in England, where the disorderly condition of society made it the interest of every man to obtain the protection of some potent lord.

The word thane corresponds in its derivation to vassal; and the latter term is used by Asserius, the contemporary biographer of Alfred, in speaking of the nobles of that prince.◊ In their attendance, too, upon the royal court, and the fidelity which was expected from them, the king's thanes seem exactly to have resembled that class of followers who, under different appellations, were the guards as well as courtiers of the Frank and Lombard sovereigns. But I have remarked that the word thane is not ap-

* Dissertatio Epistolaris, p. 60.

† This duty is by some expressed ata expedi-tio; by others, hostis propulsio, which seems to make no small difference. But, unfortunately, most of the military service which an Anglo-Saxon freeholder had to render was of the latter kind.

‡ Leges Inæ, p. 23. Du Cange, voc. Heribannum By the laws of Canute, p 135, a fine only was imposed for this offence

* Leges Inæ, p. 10, 23. † Wilkins, p. 101

‡ P. 71, 144, 145.

◊ Alfredus cum paucis suis nobilibus, et etiam cum quibusdam militibus et Vassallis, p. 166. Nobiles Vassalli Sumertunensis pagi, p. 167. Yet Hickes objects to the authenticity of a charter ascribed to Edgar, because it contains the word Vassallus, "quam à Nortmannis Angli habuerunt"—Dissertatio Epistol., p. 7.

plied to the whole body of gentry in the more ancient laws, where the word *eorl* is opposed to the *ceorl* or roturier, and that of *sithcundman** to the royal thane. It would be too much to infer from the extension of this latter word to a large class of persons, that we should interpret it with a close attention to etymology, a very uncertain guide in almost all investigations.

For the age immediately preceding the Norman invasion, we cannot have recourse to a better authority than Domesday Book. That incomparable record contains the names of every tenant, and the conditions of his tenure, under the Confessor, as well as the time of its compilation; and seems to give little countenance to the notion that a radical change in the system of our laws had been effected during the interval. In almost every page, we meet with tenants either of the crown, or of other lords, denominated thanes, freeholders (liberi homines) or soccagers (socmanni). Some of these, it is stated, might sell their lands to whom they pleased; others were restricted from alienation. Some, as it is expressed, might go with their lands whither they would; by which I understand the right of commending themselves to any patron of their choice. These, of course, could not be feudal tenants in any proper notion of that term. Others could not depart from the lord whom they served; not certainly that they were personally bound to the soil, but so long as they retained it, the seigniory of the superior could not be defeated.† But I am not aware that military service is specified in any instance to be due from one of these tenants; though it is difficul to speak as to a negative proposition of this kind with any confidence.

No direct evidence appears as to the ceremony of homage or the oath of fealty before the conquest. The feudal exaction of aid in certain prescribed cases seems to have been unknown. Still less could those of wardship and marriage prevail, which were no parts of the great feudal system, but introduced, and perhaps invented, by our rapacious Norman tyrants. The English lawyers, through an imperfect acquaintance with the history of feuds upon the continent, have treated these unjust innovations as if they had formed essential parts of the system, and sprung naturally from the relation between lord and vassal. And, with reference to the present question, Sir Henry Spelman has certainly laid too much stress upon them in concluding that feudal tenures did not exist among the Anglo-Saxons, because their lands were not in ward, nor their persons sold in marriage. But I cannot equally concur with this eminent person in denying the existence of reliefs during the same period. If the heriot, which is first mentioned in the time of Edgar* (though it may probably have been an established custom long before), were not identical with the relief, it bore at least a very strong analogy to it. A charter of Ethelred's interprets one word by the other.† In the laws of William, which re-enact those of Canute concerning heriots, the term relief is employed as synonymous.‡ Though the heriot was in later times paid in chattels, the relief in money, it is equally true that originally the law fixed a sum of money in certain cases for the heriot, and a chattel for the relief. And the most plausible distinction alleged by Spelman, that the heriot is by law due from the personal estate, but the relief from the heir, seems hardly applicable to that remote age, when the law of succession as to real and personal estate was not different.

It has been shown, in another place, how the right of territorial jurisdiction was generally, and at last inseparably connected with feudal tenure. Of this right we meet frequent instances in the laws and records of the Anglo-Saxons though not in those of an early date. A charter of Edred grants to the monastery

* Wilkins, p. 3, 7, 23, &c. This is an obscure word, occurring only, I believe, during the Heptarchy. Wilkins translates it, præpositus paganus, which gives a wrong idea. But *gesith*, which is plainly the same word, is used in Alfred's translation of Bede for a gentleman or nobleman. Where Bede uses comes, the Saxon is always gesith or gesithman; where princeps or dux occurs, the version is ealdorman.—Selden's Titles of Honour, p. 643.

† It sometimes weakens a proposition which is capable of innumerable proofs to take a very few at random: yet the following casual specimens will illustrate the common language of Domesday Book.

Hæc tria maneria tenuit Ulveva tempore regis Edwardi et potuit ire cum terrâ quó volebat, p. 85.

Toti emit eam T. R. E. (temp. regis Edwardi) de ecclesiâ Malmsburiensi ad ætatem trium hominum, et infra hunc terminum poterat ire cum eâ ad quem vellet dominum, p. 72.

Tres Angli tenuerunt Darneford T. R. E. et non poterant ab ecclesiâ separari. Duo ex iis reddebant v solidos, et tertius serviebat sicut Thainus, p. 68.

Has terras qui tenuerunt T. R. E. quó voluerunt ire poterunt, præter unum Seric vocatum, qui in Ragendal tenuit vi carucatas terræ; sed non poterat tum eâ alicubi recedere, p. 235.

* Selden's Works, vol. ii., p. 1620.

† Hist. Ramseyens, p. 430.

‡ Leges Canuti, p. 144. Leges Gulielmi, p. 223

of Croyland soc sac, toll, team, and infangthef; words which generally went together in the description of these privileges, and signify the right of holding a court to which all freemen of the territory should repair, of deciding pleas therein, as well as of imposing amercements according to law, of taking tolls upon the sale of goods, and of punishing capitally a thief taken in the fact within the limits of the manor.* Another charter from the confessor grants to the abbey of Ramsey similar rights over all who were suiters to the sheriff's court, subject to military service, and capable of landed possessions; that is, as I conceive, all who were not in servitude.† By a law of Ethelred, none but the king could have jurisdiction over a royal thane.‡ And Domesday Book is full of decisive proofs, that the English lords had their courts wherein they rendered justice to their suiters, like the continental nobility; privileges which are noticed with great precision in that record, as part of the statistical survey. For the right of jurisdiction at a time when punishments were almost wholly pecuniary, was a matter of property, and sought from motives of rapacity as well as pride.

Whether, therefore, the law of feudal tenures can be said to have existed in England before the conquest, must be left to every reader's determination. Perhaps any attempt to decide it positively would end in a verbal dispute. In tracing the history of every political institution, three things are to be considered: the principle, the form, and the name. The last will probably not be found in any genuine Anglo-Saxon record.§ Of the former, or the peculiar ceremonies and incidents of a regular fief, there is some, though not much appearance. But those who reflect upon the dependance in which free and even noble tenants held their estates of other subjects, and upon the privileges of territorial jurisdiction, will, I think, perceive much of the intrinsic character of the feudal relation, though in a less mature and systematic shape than it assumed after the Norman conquest.

PART II.

THE ANGLO-NORMAN CONSTITUTION.

The Anglo-Norman Constitution.—Causes of the Conquest.—Policy and character of William—his Tyranny.—Introduction of Feudal Services.—Difference between the Feudal Governments of France and England.—Causes of the great Power of the first Norman Kings.—Arbitrary Character of their Government.—Great Council.—Resistance of the Barons to John.—Magna Charta—its principal Articles.—Reign of Henry III.—The Constitution acquires a more liberal Character.—Judicial System of the Anglo-Normans.—Curia Regis, Exchequer, &c.—Establishment of the Common Law—its effect in fixing the Constitution.—Remarks on the Limitation of Aristocratical Privileges in England

Conquest of England by William.

It is deemed by William of Malmsbury an extraordinary work of Providence, that the English should have given up all for lost after the battle of Hastings, where only a small though brave army had perished.* It was indeed the conquest of a great kingdom by the prince of a single province, an event not easily paralleled, where the vanquished were little, if at all, less courageous than their enemies, and where no domestic factions exposed the country to an invader. Yet William was so advantageously situated, that his success seems neither unaccountable nor any matter of discredit to the English nation. The heir of the house of Cerdic had been already set aside at the election of Harold; and his youth, joined to a mediocrity of understanding which excited neither esteem nor fear,† gave no encouragement to the scheme of placing him upon the throne in those moments of imminent peril which followed the battle of Hastings. England was peculiarly destitute of great men. The weak reigns

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* Ingulfus, p. 35. I do not pretend to assert the authenticity of these charters, which at all events are nearly as old as the conquest. Hickes calls most of them in question.—Disser. Epist., p. 66: but some later antiquaries seem to have been more favourable.—Archæologia, vol. xviii., p. 49. Nouveau Traité de Diplomatique, t. i., p. 348.

† Hist. Ramsey, p. 454.

‡ P. 118. This is the earliest allusion, if I am not mistaken, to territorial jurisdiction in the Saxon laws. Probably it was not frequent till near the end of the tenth century.

§ Feodum twice occurs in the testament of Alfred; but it does not appear to be used in its proper sense, nor do I apprehend that instrument to have been originally written in Latin. It was much more consonant to Alfred's practice to employ his own language.

* Malmsb., p. 53. And Henry of Huntingdon says emphatically: Millesimo et sexagesimo sexto anno gratiæ, perfecit dominator Deus de gente Anglorum quod diu cogitaverat.—Genti namque Normannorum asperæ et callidæ tradidit eos ad exterminandum, p. 210.

† Edgar, after one or two ineffectual attempts to recover the kingdom, was treated by William with a kindness which could only have proceeded from contempt of his understanding; for he was not wanting in courage. He became the intimate friend of Robert, duke of Normandy, whose fortunes, as well as character, much resembled his own.

of Ethelred and Edward had rendered the government a mere oligarchy, and reduced the nobility into the state of retainers to a few leading houses, the representatives of which were every way unequal to meet such an enemy as the Duke of Normandy. If indeed the concurrent testimony of historians does not exaggerate his forces, it may be doubted whether England possessed military resources sufficient to have resisted so numerous and well-appointed an army.

This forlorn state of the country induced, if it did not justify, the measure of tendering the crown to William, which he had a pretext or title to claim, arising from the intentions, perhaps the promise, perhaps even the testament of Edward, which had more weight in those times than it deserved, and was at least better than the naked title of conquest. And this, supported by an oath exactly similar to that taken by the Anglo-Saxon kings, and by the assent of the multitude, English as well as Normans, on the day of his coronation, gave as much appearance of a regular succession as the circumstances of the times would permit. Those who yielded to such circumstances could not foresee, and were unwilling to anticipate, the bitterness of that servitude which William and his Norman followers were to bring upon their country.

His conduct at first moderate.

The commencement of his administration was tolerably equitable. Though many confiscations took place, in order to gratify the Norman army, yet the mass of property was left in the hands of its former possessors. Offices of high trust were bestowed upon Englishmen, even upon those whose family renown might have raised the most aspiring thoughts.*

It becomes more tyrannical.

But partly through the insolence and injustice of William's Norman vassals, partly through the suspiciousness natural to a man conscious of having overturned the national government, his yoke soon became more heavy. The English were oppressed; they rebelled, were subdued, and oppressed again. All their risings were without concert, and desperate; they wanted men fit to head them, and fortresses to sustain their revolt.† After a very few years they sank in despair, and yielded for a century to the indignities of a comparatively small body of strangers without a single tumult. So possible is it for a nation to be kept in permanent servitude, even without losing its reputation for individual courage, or its desire of freedom!

The tyranny of William displayed less of passion or insolence than of that indifference about human suffering which distinguishes a cold and far-sighted statesman. Impressed by the frequent rising of the English at the commencement of his reign, and by the recollection, as one historian observes, that the mild government of Canute had only ended in the expulsion of the Danish line,* he formed the scheme of riveting such fetters upon the conquered nation that all resistance should become impracticable. Those who had obtained honourable offices were successively deprived of them; even the bishops and abbots of English birth were deposed;† a stretch of power very singular in that age, and which marks how much the great talents of William made him feared by the church, in the moment of her highest pretensions, for Gregory VII. was in the papal chair. Morcar one of the most illustrious English, suffered perpetual imprisonment. Waltheoff, a man of equally conspicuous birth, lost his head upon a scaffold by a very harsh, if not iniquitous sentence. It was so rare in those times to inflict judicially any capital punishment upon persons of such rank, that his death seems to have produced more indignation and despair in England than any single circumstance. The name of Englishman was turned into a reproach. None of that race for a hundred years were raised to any dignity in the state or church.‡ Their language, and the characters in which it was written, were rejected as barbarous; in all schools, children were taught French,

* Ordericus Vitalis, p. 520 (in Du Chesne, Hist. Norm. Script.).

† Ordericus notices the want of castles in England, as one reason why rebellions were easily quelled, p. 511. Failing in their attempts at a generous resistance, the English endeavoured to get rid of their enemies by assassination, to which many Normans became victims. William therefore enacted, that in every case of *murder*, which strictly meant the killing of any one by an unknown hand, the hundred should be liable in a fine unless they could prove the person murdered to be an Englishman. This was tried by an inquest upon what was called a presentment of Englishry. But from the reign of Henry II., the two nations having been very much intermingled, this inquiry, as we learn from the Dialogue de Scaccario, p. 26, ceased, and in every case of a freeman murdered by persons unknown, the hundred was fined.—See however Bracton, l. iii., c. 15.

* Malmsbury, p. 104. † Hoveden, p. 453.

‡ Becket is said to have been the first English man who reached any considerable dignity.—Lord Lyttleton's Hist. of Henry II., vol. ii., p. 22. And Eadmer declares that Henry I. would not place a single Englishman at the head of a monastery. Si Anglus erat, nulla virtus, ut honore aliquo dignus judicaretur, eum poterat adjuvare, p. 119

and the laws were administered in no other tongue * It is well known that this use of French in all legal proceedings lasted till the reign of Edward III.

Confiscation of English property.

This exclusion of the English from political privileges was accompanied with such a confiscation of property as never perhaps has proceeded from any government not avowedly founding its title upon the sword. In twenty years from the accession of William, almost the whole soil of England had been divided among foreigners. Of the native proprietors many had perished in the scenes of rapine and tyranny which attended this convulsion; many were fallen into the utmost poverty; and not a few, certainly, still held their lands as vassals of Norman lords. Several English nobles, desperate of the fortunes of their country, sought refuge in the court of Constantinople, and approved their valour in the wars of Alexius against another Norman conqueror scarcely less celebrated than their own, Robert Guiscard. Under the name of Varangians, those true and faithful supporters of the Byzantine empire preserved to its dissolution their ancient Saxon idiom.†

The extent of this spoliation of property is not to be gathered merely from historians, whose language might be accused of vagueness and amplification. In the great national survey of Domesday Book, we have an indisputable record of this vast territorial revolution during the reign of the Conqueror. I am indeed surprised at Brady's position, that the English had suffered an indiscriminate deprivation of their lands. Undoubtedly there were a few left in almost every county, who still enjoyed the estates which they held under Edward the Confessor, free from any superiority but that of the crown, and were denominated, as in former times, the king's thanes.* Cospatric, son perhaps of one of that name who had possessed the earldom of Northumberland, held forty-one manors in Yorkshire, though many of them are stated in Domesday to be waste. Inferior freeholders were probably much less disturbed in their estates than the higher class. Though few of English birth continued to enjoy entire manors, even by a mesne tenure, it is reasonable to suppose that the greater part of those who appear, under various denominations, to have possessed small freeholds and parcels of manors, were no other than the original natives.

Devastation of Yorkshire and New Forest

Besides the severities exercised upon the English after every insurrection, two instances of William's unsparing cruelty are well known, the devastation of Yorkshire and of the New Forest. In the former, which had the tyrant's plea, necessity, for its pretext, an invasion being threatened from Denmark, the whole country between the Tyne and the Humber was laid so desolate, that for nine years afterward there was not an inhabited village, and hardly an inhabitant left; the wasting of this district having been followed by a famine, which swept away the whole population.† That of the New Forest, though undoubtedly less calamitous in its effects, seems even more monstrous, from the frivolousness of the cause.‡ He afforested several other tracts. And these favourite demesnes of the Norman kings were protected by a system of iniquitous and cruel regulations, called the Forest Laws, which it became afterward a great object with the assertors of liberty to correct. The penalty for killing a stag or a boar was loss of eyes: for William loved the great game, says the Saxon Chronicle, as if he had been their father.§

A more general proof of the ruinous

* Ingulfus, p. 61. Tantum tunc Anglicos abominati sunt, ut quantocunque merito pollerent, de dignitatibus repellebantur; et multo minus habiles alienigenæ de quâcunque aliâ natione, quæ sub cœlo est, extitissent, gratanter assumerentur. Ipsum etiam idioma tantum abhorrebant, quod leges terræ, statutaque Anglicorum regum linguâ Gallicâ tractarentur; et pueris etiam in scholis principia literarum grammatica Gallicè, ac non Anglicè traderentur; modus etiam scribendi Anglicus omitteretur, et modus Gallicus in chartis et in libris omnibus admitteretur.

† Gibbon, vol. x., p. 223. No writer, except perhaps the Saxon Chronicler, is so full of William's tyranny as Ordericus Vitalis.—See particularly pp. 507, 512, 514, 521, 523, in Du Chesne, Hist. Norm. Script. Ordericus was an Englishman, but passed at ten years old, A. D. 1084, into Normandy, where he became professed in the monastery of Eu. ibid, p 924

* Brady, whose unfairness always keeps pace with his ability, pretends that all these were menial officers of the king's household. But notwithstanding the difficulty of disproving these gratuitous suppositions, it is pretty certain that many of the English proprietors in Domesday could not have been of this description.—See p. 99, 153, 218, 219, and other places. The question, however, was not worth a battle, though it makes a figure in the controversy of Normans and Anti-Normans, between Dugdale and Brady on the one side, and Tyrrell, Petyt, and Atwood on the other.

‡ Malmsbury, p. 103. Hoveden, p. 451. Ordericus Vitalis, p. 514. The desolation of Yorkshire continued in Malmsbury's time, sixty or seventy years afterward: nudum omnium solum usque ad hoc etiam tempus.

‡ Malmsbury, p. 111.

§ Chron. Saxon., p. 191

Proofs of depopulation from Domesday Book.

oppression of William the Conqueror may be deduced from the comparative condition of the English towns in the reign of Edward the Confessor, and at the compilation of Domesday. At the former epoch there were in York 1607 inhabited houses, at the latter 967; at the former there were in Oxford 721, at the latter 243; of 172 houses in Dorchester, 100 were destroyed; of 243 in Derby, 103; of 487 in Chester, 205. Some other towns had suffered less, but scarcely any one fails to exhibit marks of a decayed population. As to the relative numbers of the peasantry and value of lands at these two periods, it would not be easy to assert any thing without a laborious examination of Domesday Book.

Domains of the crown.

The demesne lands of the crown, extensive and scattered over every county, were abundantly sufficient to support its dignity and magnificence;* and William, far from wasting this revenue by prodigal grants, took care to let them at the highest rate to farm, little caring how much the cultivators were racked by his tenants.† Yet his exactions, both feudal and in the way of tallage from his burgesses and the tenants of his vassals, were almost as violent as his confiscations. No source of income was neglected by him, or indeed by his successors, however trifling, unjust, or unreasonable. His revenues, if we could trust Ordericus Vitalis, amounted to £1060 a day. This, in mere weight of silver, would be equal to nearly £1,200,000 a year at present. But the arithmetical statements of these writers are not implicitly to be relied upon. He left at his death a treasure of £60,000, which, in conformity to his dying request, his successor distributed among the church and poor of the kingdom, as a feeble expiation of the crimes by which it had been accumulated;‡ an act of disinterestedness, which seems to prove that Rufus, amid all his vices, was not destitute of better feelings than historians have ascribed to him. It might appear that William had little use for his extorted wealth. By the feudal constitution, as established during his reign, he commanded the service of a vast army at its own expense, either for domestic or continental warfare. But this was not sufficient for his purpose like other tyrants, he put greater trus in mercenary obedience Some of his predecessors had kept bodies of Danish troops in pay; partly to be secure against their hostility, partly from the convenience of a regular army, and the love which princes bear to it. But William carried this to a much greater length. He had always stipendiary soldiers at his command. Indeed, his army at the conquest could not have been swelled to such numbers by any other means. They were drawn, by the allurement of high pay, not from France and Britany alone, but Flanders, Germany, and even Spain. When Canute of Denmark threatened an invasion in 1085, William, too conscious of his own tyranny to use the arms of his English subjects, collected a mercenary force so vast, that men wondered, says the Saxon Chronicler, how the country could maintain it. This he quartered upon the people, according to the proportion of their estates.*

Riches of the Conqueror.

His mercenary troops

Whatever may be thought of the Anglo Saxon tenures, it is certain that those of the feudal system were thoroughly established in England under the Conqueror. It has been observed in another part of this work, that the rights, or feudal incidents of wardship and marriage, were nearly peculiar to England and Normandy. They certainly did not exist in the former before the conquest; but whether they were ancient custom of the latter cannot be ascertained, unless we had more incontestable records of its early jurisprudence. For the Great Customary of Normandy is a compilation as late as the reign of Richard Cœur de Lion, when the laws of England might have passed into a country so long and intimately connected with it But there appears reason to think that the seizure of the lands in wardship, the selling of the heiress in marriage, were originally deemed rather acts of violence than conformable to law. For Henry I.'s charter expressly promises that the mother, or next of kin, shall have the custody of the lands as well as person of the heir.† And as the charter of Henry II. refers to and confirms that of his grandfather, it seems to follow that what

Feudal system established

* They consisted of 1422 manors.—Lyttleton's Henry II., vol. ii., p. 288.

† Chron. Saxon., p. 188.

‡ Huntingdon, p. 371. Ordericus Vitalis puts a long penitential speech into William's mouth on his death-bed, p. 666. Though this may be his invention, yet facts seem to show the compunctions of the tyrant's conscience.

* Chron. Saxon., p. 185. Ingulfus, p. 79.

† Terræ et liberorum custos erit sive uxor, sive alius propinquorum, qui justus esse debebit; et præcipio ut barones mei similiter se contineant erga filios vel filias vel uxores hominum meorum. Leges Anglo-Saxonicæ, p. 234

is called guardianship in chivalry had not yet been established. At least it is not till the assize of Clarendon, confirmed at Northampton in 1176,* that the custody of the heir is clearly reserved to the lord. With respect to the right of consenting to the marriage of a female vassal, it seems to have been, as I have elsewhere observed, pretty general in feudal tenures. But the sale of her person in marriage, or the exaction of a sum of money in lieu of this scandalous tyranny, was only the law of England, and was not perhaps fully authorized as such till the statute of Merton in 1236.

One innovation made by William upon the feudal law is very deserving of attention. By the leading principle of feuds, an oath of fealty was due from the vassal to the lord of whom he immediately held his land, and to no other. The King of France, long after this period, had no feudal and scarcely any royal authority over the tenants of his own vassals. But William received at Salisbury, in 1085, the fealty of all landholders in England, both those who held in chief and their tenants;† thus breaking in upon the feudal compact in its most essential attribute, the exclusive dependance of a vassal upon his lord. And this may be reckoned among the several causes which prevented the continental notions of independence upon the crown from ever taking root among the English aristocracy.

Preservation of public peace.

The best measure of William was the establishment of public peace. He permitted no rapine but his own. The feuds of private revenge, the lawlessness of robbery, were repressed. A girl loaded with gold, if we believe some ancient writers, might have passed safely through the kingdom.‡ But this was the tranquillity of an imperious and vigilant despotism, the degree of which may be measured by these effects, in which no improvement of civilization had any share. There is assuredly nothing to wonder at in the detestation with which the English long regarded the memory of this tyrant.§ Some advantages undoubtedly, in the course of human affairs, eventually sprang from the Norman conquest. The invaders, though without perhaps any intrinsic superiority in social virtues over the native English, degraded and barbarous as these are represented to us, had at least that exterior polish of courteous and chivalric manners, and that taste for refinement and magnificence, which serve to elevate a people from mere savage rudeness. Their buildings, sacred as well as domestic, became more substantial and elegant. The learning of the clergy, the only class to whom that word could at all be applicable, became infinitely more respectable in a short time after the conquest. And though this may by some be ascribed to the general improvements of Europe in that point during the twelfth century, yet I think it was partly owing to the more free intercourse with France and the closer dependance upon Rome which that revolution produced. This circumstance was, however, of no great moment to the English of those times, whose happiness could hardly be affected by the theological reputation of Lanfranc and Anselm. Perhaps the chief benefit which the natives of that generation derived from the government of William and his successors, next to that of a more vigilant police, was the security they found from invasion on the side of Denmark and Norway. The high reputation of the conqueror and his sons, with the regular organization of a feudal militia, deterred those predatory armies which had brought such repeated calamity on England in former times.

Difference between the feudal policy in England and France.

The system of feudal policy, though derived to England from a French source, bore a very different appearance in the two countries. France, for about two centuries after the house of Capet had usurped the throne of Charlemagne's posterity, could hardly be deemed a regular confederacy, much less an entire monarchy. But in England, a government, feudal indeed in its form, but arbitrary in its exercise, not only maintained subordination, but almost extinguished liberty. Several causes seem to have conspired towards this radical difference. In the first place, a kingdom, comparatively small, is much more easily kept under control than one of vast extent. And the fiefs of Anglo-Norman barons after the conquest were far less considerable, even relatively to the size of the two countries, than those of France. The Earl of Chester held, indeed, almost all that county;* the

* Leges Anglo-Saxonicæ, p. 330.

† Chron. Saxon., p. 187.

‡ Chron. Saxon., p. 190. M. Paris, p. 10. I will not omit one other circumstance, apparently praiseworthy, which Ordericus mentions of William, that he tried to learn English, in order to render justice by understanding every man's complaint, but failed on account of his advanced age, p. 520. This was in the early part of his reign, before the reluctance of the English to submit had exasperated his opposition.

§ W. Malmsb., Prael. l. iii.

* This was upon the whole, more like a gren

Earl of Shrewsbury nearly the whole of Salop. But these domains bore no comparison with the dukedom of Guienne or the county of Toulouse. In general, the lordships of William's barons, whether this were owing to policy or accident, were exceedingly dispersed. Robert, earl of Moreton, for example, the most richly-endowed of his followers, enjoyed 248 manors in Cornwall, 54 in Sussex, 196 in Yorkshire, 99 in Northamptonshire, besides many in other counties.* Estates so disjoined, however immense in their aggregate, were ill calculated for supporting a rebellion. It is observed by Madox, that the knight's fees of almost every barony were scattered over various counties.

In the next place, these baronial fiefs were held under an actual derivation from the crown. The great vassals of France had usurped their dominions before the accession of Hugh Capet, and barely submitted to his nominal sovereignty. They never intended to yield the feudal tributes of relief and aid, nor did some of them even acknowledge the supremacy of his royal jurisdiction. But the conqueror and his successors imposed what conditions they would upon a set of barons who owed all to their grants; and as mankind's notions of right are generally founded upon prescription, these peers grew accustomed to endure many burdens, reluctantly indeed, but without that feeling of injury which would have resisted an attempt to impose them upon the vassals of the French crown. For the same reasons, the barons of England were regularly summoned to the great council, and by their attendance in it, and concurrence in the measures which were there resolved upon, a compactness and unity of interest was given to the monarchy which was entirely wanting in that of France. But above all, the paramount authority of the king's court, and those excellent Saxon tribunals of the county and hundred, kept within very narrow limits that great support of the feudal aristocracy, the right of territorial jurisdiction. Except in the counties palatine, the feudal courts possessed a very trifling degree of jurisdiction over civil, and no very extensive one over criminal causes.

We may add to the circumstances that rendered the crown powerful during the first century after the conquest, an extreme antipathy of the native English towards their invaders. Both William Rufus and Henry I. made use of the former to strengthen themselves against the attempts of their brother Robert; though they forgot their promises to the English after attaining their object.* A fact, mentioned by Ordericus Vitalis, illustrates the advantage which the government found in this national animosity. During the siege of Bridgenorth, a town belonging to Robert de Belesme, one of the most turbulent and powerful of the Norman barons, by Henry I., in 1102, the rest of the nobility deliberated together, and came to the conclusion, that if the king could expel so distinguished a subject, he would be able to treat them all as his servants. They endeavoured, therefore, to bring about a treaty; but the English part of Henry's army, hating Robert de Belesme as a Norman, urged the king to proceed with the siege; which he did, and took the castle.†

Hatred of English to Normans.

Unrestrained, therefore, comparatively speaking, by the aristocratic principles which influenced other feudal countries, the administration acquired a tone of rigour and arbitrariness under William the Conqueror, which, though sometimes perhaps a little mitigated, did not cease during a century and a half. For the first three reigns we must have recourse to historians; whose language, though vague, and perhaps exaggerated, is too uniform and impressive to leave a doubt of the tyrannical character of the government. The intolerable exactions of tribute, the rapine of purveyance, the iniquity of royal courts, are continually in their mouths. "God sees the wretched people," says the Saxon Chronicler, "most unjustly oppressed; first they are despoiled of their possessions, then butchered. This was a grievous year (1124). Whoever had any property, lost it by heavy taxes and unjust decrees."‡ The

Tyranny of the Norman government

French fief than any English earldom. Hugh de Abrincis, nephew of William I., had barons of his own, one of whom held forty-six and another thirty manors. Chester was first called a county-palatine under Henry II.; but it previously possessed all regalian rights of jurisdiction. After the forfeitares of the house of Montgomery, it acquired all the country between the Mersey and Ribble. Several eminent men inherited the earldom; but upon the death of the most distinguished, Ranulf, in 1232 it fell into a female line, and soon escheated to the crown.—Dugdale's Baronage, p. 45. Lyttleton's Henry II., vol. ii., p. 218.

* Dugdale's Baronage, p. 25.

* W. Malmsbury, p. 120 et 156. R. Hoveden, p. 461. Chron. Saxon., p. 194.

† Du Chesne, Script. Norman., p. 807.

‡ Chron. Saxon., p. 228. Non facile potest narrari miseria, says Roger de Hoveden, quam susti

same ancient chronicle, which appears to have been continued from time to time in the abbey of Peterborough, frequently utters similar notes of lamentation.

From the reign of Stephen, the miseries of which are not to my immediate purpose, so far as they proceeded from anarchy and intestine war,* we are able to trace the character of government by existing records.† These, digested by the industrious Madox into his History of the Exchequer, give us far more insight into the spirit of the constitution, if we may use such a word, than all our monkish chronicles. It was not a sanguinary despotism. Henry II. was a prince of remarkable clemency; and none of the Conqueror's successors were as grossly tyrannical as himself. But the system of rapacious extortion from their subjects prevailed to a degree which we should rather expect to find among eastern slaves, than that high-spirited race of Normandy, whose renown then filled Europe and Asia. The right of wardship was abused by selling the heir and his land to the highest bidder. That of marriage was carried to a still grosser excess. The kings of France indeed claimed the prerogative of forbidding the marriage of their vassals' daughters to such persons as they thought unfriendly or dangerous to themselves; but I am not aware that they ever compelled them to marry, much less that they turned this attribute of sovereignty into a means of revenue. But in England, women, and even men, simply as tenants in chief, and not as wards, fined to the crown for leave to marry whom they would, or not to be compelled to marry any other.‡ Towns not only fined for original grants of franchises, but for repeated confirmations. The Jews paid exorbitant sums for every common right of mankind, for protection, for justice. In return, they were sustained against their Christian debtors in demands of usury, which superstition and tyranny rendered enormous.* Men fined for the king's good-will; or that he would remit his anger; or to have his mediation with their adversaries. Many fines seem as it were imposed in sport, if we look to the cause; though their extent, and the solemnity with which they were recorded, prove the humour to have been differently relished by the two parties. Thus the Bishop of Winchester paid a tun of good wine for not reminding the king (John) to give a girdle to the Countess of Albemarle; and Robert de Vaux five best palfreys, that the same king might hold his peace about Henry Pinel's wife. Another paid four marks for leave to eat (pro licentiâ comedendi). But of all the abuses which deformed the Anglo-Norman government, none was so flagitious as the sale of judicial redress. The king, we are often told, is the fountain of justice; but in those ages, it was one which gold alone could unseal. Men fined to have right done them; to sue in a certain court; to emplead a certain person; to have restitution of land which they had recovered at law.† From the sale of that justice which every citizen has a right to demand, it was an easy transition to withhold or deny it. Fines were received for the king's help against the adverse suiter; that is, for perversion of justice, or for delay. Sometimes they were paid by opposite parties, and, of course, for opposite ends. These were called counter-fines; but the money was sometimes, or, as Lord Lyttleton thinks, invariably, returned to the unsuccessful suiter.‡

Its exactions.

General taxes

Among a people imperfectly civilized, the most outrageous injustice towards individuals may pass without the slightest notice, while in matters affecting the community, the powers of government are exceedingly controlled. It becomes therefore an important question, what prerogative these Norman kings were used to exercise in raising money, and in general legislation. By the prevailing feudal customs, the lord was entitled to demand a pecuniary aid of his vassals in certain cases. These

nuit illo tempore [circ. ann. 1103], terra Anglorum propter regias exactiones, p. 470.

* The following simple picture of that reign from the Saxon Chronicle may be worth inserting. 'The nobles and bishops built castles, and filled them with devilish and wicked men, and oppressed the people, cruelly torturing men for their money. They imposed taxes upon towns, and when they had exhausted them of every thing, set them on fire. You might travel a day, and not find one man living in a town, nor any land in cultivation. Never did the country suffer greater evils. If two or three men were seen riding up to a town, all its inhabitants left it, taking them for plunderers. And this lasted, growing worse and worse, throughout Stephen's reign. Men said openly that Christ and his saints were asleep," p. 239.

† The earliest record in the Pipe-office is that which Madox, in conformity to the usage of others, cites by the name of Magnum Rotulum quinto Stephani. But in a particular dissertation subjoined to his History of the Exchequer, he inclines, though not decisively, to refer this record to the reign of Henry I. ‡ Madox, c. 10.

* Madox, c. 7. † Id., c. 12 and 13.

‡ The most opposite instances of these exactions are well selected from Madox by Hume, Appendix II.: upon which account I have gone less into detail than would otherwise have been necessary.

were, in England, to make his eldest son a knight, to marry his eldest daughter, and to ransom himself from captivity. Accordingly when such circumstances occurred, aids were levied by the crown upon its tenants, at the rate of a mark or a pound for every knight's fee.* These aids, being strictly due in the prescribed cases, were taken without requiring the consent of parliament. Escuage, which was a commutation for the personal service of military tenants in war, having rather the appearance of an indulgence than an imposition, might reasonably be levied by the king.† It was not till the charter of John that escuage became a parliamentary assessment; the custom of commuting service having then grown general, and the rate of commutation being variable.

None but military tenants could be liable for escuage;‡ but the inferior subjects of the crown were oppressed by tallages. The demesne lands of the king and all royal towns were liable to tallage; an imposition far more rigorous and irregular than those which fell upon the gentry. Tallages were continually raised upon different towns during all the Norman reigns, without the consent of parliament, which neither represented them nor cared for their interests. The itinerant justices in their circuit usually set this tax. Sometimes the tallage was assessed in gross upon a town, and collected by the burgesses: sometimes individually, at the judgment of the justices. There was an appeal from an excessive assessment to the barons of the exchequer. Inferior lords might tallage their own tenants and demesne towns, though not, it seems, without the king's permission.§ Customs upon the import and export of merchandise, of which the prisage of wine, that is, a right of taking two casks out of each vessel, seems the most material, were immemorially exacted by the crown. There is no appearance that these originated with parliament.* Another tax, extending to all the lands of the kingdom, was Danegeld, the ship-money of those times. This name had been originally given to the tax imposed under Ethelred II., in order to raise a tribute exacted by the Danes. It was afterward applied to a permanent contribution for the public defence against the same enemies. But after the conquest this tax is said to have been only occasionally required; and the latest instance on record of its payment is in the 20th of Henry II. Its imposition appears to have been at the king's discretion.†

The right of general legislation was undoubtedly placed in the king, conjointly with his great council,‡ or, if the expression be thought more proper, with their advice. So little opposition was found in these assemblies by the early Norman kings, that they gratified their own love of pomp, as well as the pride of their barons, by consulting them in every important business. But the limits of legislative power were extremely indefinite. New laws, like new taxes, affecting the community, required the sanction of that assembly which was supposed to represent it; but there was no security for individuals against acts of prerogative, which we should justly consider as most tyrannical. Henry II., the best of these monarchs, banished from England the relations and friends of Becket, to the number of four hundred. At another time, he sent over from Normandy an injunction, that all the kindred of those who obeyed a papal interdict should be banished, and their estates confiscated.§

Right of legislation

* The *reasonable aid* was fixed by the statute of Westminster I., 3 Edw. I., c. 36, at twenty shillings for every knight's fee, and as much for every 20*l.* value of land held by soccage. The aid pour faire fitz chevalier might be raised, when he entered into his fifteenth year; pour fille marier, when she reached the age of seven.

† Fit interdum, ut imminente vel insurgente in regnum hostium machinatione, decernat rex de singulis feodis militum summam aliquam solvi, marcam scilicet, vel libram unam; unde militibus stipendia vel donativa succedant. Mavult enim princeps stipendiarios quàm domesticos bellicis exponere casibus. Hæc itaque summa, quia nomine scutorum solvitur, scutagium nominatur.—Dialogus de Scaccario, ad finem. Madox, Hist. Exchequer, p. 25 (edit. in folio).

‡ The tenant in capite was entitled to be reimbursed what would have been his escuage by his vassals even if he performed personal service.—Madox, c. 16.

§ For the important subject of tallages, see Madox, c. 17.

* Madox, c. 18. Hale's Treatise on the Customs in Hargrave's Tracts, vol. i., p. 116.

† Henr. Huntingdon, l. v., p. 205. Dialogus de Scaccario, c. 11. Madox, c. 17. Lyttleton's Henry II., vol. ii., p. 170.

‡ Glanvil, Prologus ad Tractatum de Consuetud

§ Hoveden, p. 496. Lyttleton, vol. ii., p. 530. The latter says that this edict must have been framed by the king with the advice and assent of his council. But if he means his great council, I cannot suppose that all the barons and tenants in capite could have been duly summoned to a council held beyond seas. Some English barons might doubtless have been with the king, as at Verneuil in 1176, where a mixed assembly of English and French enacted laws for both countries. Benedict. Abbas apud Hume. So at Northampton in 1165, several Norman barons voted, nor is any

Laws and characters of Norman kings.

The statutes of those reigns do not exhibit to us many provisions calculated to maintain public liberty on a broad and general foundation. And although the laws then enacted have not all been preserved, yet it is unlikely that any of an extensively remedial nature should have left no trace of their existence. We find, however, what has sometimes been called the Magna Charta of William the Conqueror, preserved in Roger de Hoveden's collection of his laws. We will, enjoin, and grant, says the king, that all freemen of our kingdom shall enjoy their lands in peace, free from all tallage, and from every unjust exaction, so that nothing but their service lawfully due to us shall be demanded at their hands.* The laws of the Conqueror, found in Hoveden, are wholly different from those in Ingulfus, and are suspected not to have escaped considerable interpolation.† It is remarkable that no reference is made to this concession of William the Conqueror in any subsequent charter. However, it seems to comprehend only the feudal tenants of the crown. Nor does the charter of Henry I., though so much celebrated, contain any thing specially expressed but a remission of unreasonable reliefs, wardships, and other feudal burdens.‡ It proceeds, however, to declare that he gives his subjects the laws of Edward the Confessor, with the emendations made by his father with consent of his barons.◊ The charter of Stephen not only confirms that of his predecessor, but adds, in fuller terms than Henry had used, an express concession of the laws and customs of Edward.* Henry II. is silent about these, although he repeats the confirmation of his grandfather's charter.† The people, however, had begun to look back to a more ancient standard of law. The Norman conquest, and all that ensued upon it, had endeared the memory of their Saxon government. Its disorders were forgotten, or rather were less odious to a rude nation, than the coercive justice by which they were afterward restrained.‡ Hence it became the favourite cry to demand the laws of Edward the Confessor; and the Normans themselves, as they grew dissatisfied with the royal administration, fell into these English sentiments.◊ But what these laws were, or more properly, perhaps, these customs, subsisting in the Confessor's age, was not very distinctly understood.‖ So far, however, was clear, that the rigorous feudal servitudes, the weighty tributes upon poorer freemen, had never prevailed before the conquest. In claiming the laws of Edward the Confessor, our ancestors meant but the redress of grievances which tradition told them had not always existed.

Richard I.'s chancellor deposed by the barons

It is highly probable, independently of the evidence supplied by the charters of Henry I. and his two successors, that a sense of oppression had long been stim-

notice taken of this as irregular.—Fitz Stephen, ibid. So unfixed, or rather unformed, were all constitutional principles.

* Volumus etiam, ac firmiter præcipimus et concedimus, ut omnes liberi homines totius monarchiæ prædicti regni nostri habeant et teneant terras suas et possessiones suas benè, et in pace, liberè ab omni exactione injustâ, et ab omni tallagio, ita quod nihil ab iis exigatur vel capiatur, nisi servitium suum liberum, quod de jure nobis facere debent, et facere tenentur; et prout statutum est iis, et illis a nobis datum et concessum jure hæreditario in perpetuum per commune concilium totius regni nostri prædicti.

† Selden, ad Eadmerum. Hody (Treatise on Convocations, p. 249), infers from the words of Hoveden, that they were altered from the French original by Glanvil.

‡ Wilkins, p. 234

◊ A great impression is said to have been made on the barons confederated against John by the production of Henry I.'s charter, whereof they had been ignorant.—Matt. Paris., p. 212. But this could hardly have been the existing charter, for reasons alleged by Blackstone.—Introduction to Magna Charta, p 6

* Wilkins, Leges Anglo-Saxon., p. 310.

† Id., p. 318.

‡ The Saxon Chronicler complains of a witten agemot, as he calls it, or assizes, held at Leicester in 1124, where forty-four thieves were hanged a greater number than was ever before known; it was said that many suffered unjustly, p. 228.

◊ The distinction between the two nations was pretty well obliterated at the end of Henry II.'s reign, as we learn from the Dialogue on the Exchequer, then written; jam cohabitantibus Angli cis et Normannis, et alterutrûm uxores ducenti bus vel nubentibus, sic permixtæ sunt nationes, ut vix discerni possit hodie, de liberis loquor, quis Anglicus, quis Normannus sit genere; exceptis duntaxat ascriptitiis qui villani dicuntur, quibus non est liberum obstantibus dominis suis a sui status conditione discedere. Eapropter pene qui cunque sic hodie occisus reperitur, ut murdrum punitur, exceptis his quibus certa sunt ut diximus servilis conditionis indicia, p. 26.

‖ Non quas tulit, sed quas observaverit, says William of Malmsbury, concerning the Confessor's laws. Those bearing his name in Lambard and Wilkins are evidently spurious, though it may not be easy to fix upon the time when they were forged. Those found in Ingulfus, in the French language, are genuine, and were confirmed by William the Conqueror. Neither of these collections, however, can be thought to have any relation to the civil liberty of the subject. It has been deemed more rational to suppose, that these longings for Edward's laws were rather meant for a mild administration of government, free from unjust Norman innovations, than any written and definitive system.

ulating the subjects of so arbitrary a governm nt, before they gave any demonstrations of it sufficiently palpable to find a place in history. But there are certainly no instances of rebellion, or even, as far as we know, of a constitutional resistance in parliament, down to the reign of Richard I. The revolt of the earls of Leicester and Norfolk against Henry II., which endangered his throne and comprehended his children with a large part of his barons, appears not to have been founded even upon the pretext of public grievances. Under Richard I., something more of a national spirit began to show itself. For the king having left his chancellor, William Longchamp, joint regent and justiciary with the Bishop of Durham during his crusade, the foolish insolence of the former, who excluded his coadjutor from any share in he administration, provoked every one of the nobility. A convention of these, the king's brother placing himself at their head, passed a sentence of removal and banishment upon the chancellor. Though there might be reason to conceive that this would not be unpleasing to the king, who was already apprized how much Longchamp had abused his trust, it was a remarkable assumption of power by that assembly, and the earliest authority for a leading principle of our constitution, the responsibility of ministers to parliament.

In the succeeding reign of John, all the rapacious exactions usual to these Norman kings were not only redoubled, but mingled with other outrages of tyranny still more intolerable.* These too were to be endured at the hands of a prince utterly contemptible for his folly and cowardice. One is surprised at the forbearance displayed by the barons, till they took arms at length in that confederacy which ended in establishing the Great Charter of Liberties. As this was the first effort towards a legal government, so is it beyond comparison the most important event in our history, except that revolution without which its benefits would rapidly have been annihilated. The constitution of England has indeed no single date from which its duration is to be reckoned. The institutions of positive law, the far more important changes which time has wrought in the order of society during six hundred years subsequent to the Great Charter have undoubtedly lessened its direct application to our present circumstances. But it is still the keystone of English liberty. All that has since been obtained is little more than as confirmation or commentary; and if every subsequent law were to be swept away, there would still remain the bold features that distinguish a free from a despotic monarchy. It has been lately the fashion to depreciate the value of Magna Charta, as if it had sprung from the private ambition of a few selfish barons, and redressed only some feudal abuses. It is indeed of little importance by what motives those who obtained it were guided. The real characters of men most distinguished in the transactions of that time are not easily determined at present. Yet if we bring these ungrateful suspicions to the test they prove destitute of all reasonable foundation. An equal distribution of civil rights to all classes of freemen forms the peculiar beauty of the charter. In this just solicitude for the people, and in the moderation which infringed upon no essential prerogative of the monarchy we may perceive a liberality and patriotism very unlike the selfishness which is sometimes rashly imputed to those ancient barons. And, as far as we are guided by historical testimony, two great men, the pillars of our church and state, may be considered as entitled beyond the rest to the glory of this monument; Stephen Langton, archbishop of Canterbury, and William, earl of Pembroke. To their temperate zeal for a legal government, England was indebted during that critical period for the two greatest blessings that patriotic statesmen could confer; the establishment of civil liberty upon an immoveable basis, and the preservation of national independence under the ancient line of sovereigns, which rasher men were about to exchange for the dominion of France.

Magna Charta.

By the Magna Charta of John, reliefs were limited to a certain sum, according to the rank of the tenant, the waste committed by guardians in chivalry restrained, the disparagement in matrimony of female wards forbidden, and widows secured from compulsory marriage. These regulations, extending to the sub-vassals of the crown, redressed the worst grievances of every military tenant in England. The franchises of the city of London and of all towns and boroughs were declared inviolable. The freedom of commerce was guarantied to alien mer

* In 1207, John took a seventh of the moveables of lay and spiritual persons, cunctis murmurantibus, sed contradicere non audentibus.—Matt. Paris, p. 186, ed. 1684. But his insults upon the nobility in debauching their wives and daughters were, as usually happens, the most exasperating provocation

chants. The Court of Common Pleas, instead of following the king's person, was fixed at Westminster. The tyranny exercised in the neighbourhood of royal forests met with some check, which was further enforced by the Charter of Forests under Henry III.

But the essential clauses of Magna Charta are those which protect the personal liberty and property of all freemen, by giving security from arbitrary imprisonment and arbitrary spoliation. "No freeman (says the 29th chapter of Henry III.'s charter, which, as the existing law, I quote in preference to that of John, the variations not being very material) shall be taken or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor send upon him, but by lawful judgment of his peers, or by the law of the land.* We will sell to no man, we will not deny, or delay to any man justice or right." It is obvious that these words, interpreted by any honest court of law, convey an ample security for the two main rights of civil society. From the era, therefore, of King John's charter, it must have been a clear principle of our constitution, that no man can be detained in prison without trial. Whether courts of justice framed the writ of habeas corpus in conformity to the spirit of this clause, or found it already in their register, it became from that era the right of every subject to demand it. That writ, rendered more actively remedial by the statute of Charles II., but founded upon the broad basis of Magna Charta, is the principal bulwark of English liberty; and if ever temporary circumstances, or the doubtful plea of political necessity, shall lead men to look on its denial with apathy, the most distinguishing characteristic of our constitution will be effaced.

As the clause recited above protects the subject from any absolute spoliation of his freehold rights, so others restrain the excessive amercements which had an almost equally ruinous operation. The magnitude of his offence, by the 14th clause of Henry III.'s charter, must be the measure of his fine, and in every case the *contenement* (a word expressive of chattels necessary to each man's station, as the arms of a gentleman, the merchandise of a trader, the plough and wagons of a peasant) was exempted from seizure. A provision was made in the charter of John, that no aid or scutage should be imposed, except in the three feudal cases of aid, without consent of parliament. And this was extended to aids paid by the city of London. But the clause was omitted in the three charters granted by Henry III., though parliament seem to have acted upon it in most part of his reign. It had, however, no reference to tallages imposed upon towns without their consent. Fourscore years were yet to elapse before the great principle of parliamentary taxation was explicitly and absolutely recognised.

A law which enacts that justice shall neither be sold, denied, nor delayed, stamps with infamy that government under which it had become necessary. But from the time of the charter, according to Madox, the disgraceful perversions of right, which are upon record in the rolls of the exchequer, became less frequent.*

From this era a new soul was infused into the people of England. Her liberties, at the best long in abeyance, became a tangible possession, and those indefinite aspirations for the laws of Edward the Confessor were changed into a steady regard for the Great Charter. Pass but from the history of Roger de Hoveden to that of Matthew Paris, from the second Henry to the third, and judge whether the victorious struggle had not excited an energy of public spirit to which the nation was before a stranger. The strong man, in the sublime language of Milton, was aroused from sleep, and shook his invincible locks. Tyranny indeed, and injustice, will, by all historians not absolutely servile, be noted with moral reprobation, but never shall we find in the English writers of the twelfth century that assertion of positive and national rights which distinguishes those

State of the constitution under Henry III.

* Nisi per legale judicium parium suorum, *vel* per legem terræ. Several explanations have been offered of the alternative clause, which some have referred to judgment by default or demurrer, others to the process of attachment for contempt. Certainly there are many legal procedures besides trial by jury, through which a party's goods or person may be taken. But one may doubt whether these were in contemplation of the framers of Magna Charta. In an entry of the charter of 1217 by a contemporary hand, preserved in a book in the town-clerk's office in London, called Liber Custumarum et Regum antiquorum, a various reading, *et* per legem terræ, occurs.—Blackstone's Charters, p. 42. And the word *vel* is so frequently used for *et*, that I am not wholly free from a suspicion that it was so intended in this place. The meaning will be, that no person shall be disseized, &c. except upon a lawful cause of action or endictment, found by the verdict of a jury. This really seems as good as any of the disjunctive interpretations; but I do not offer it with much confidence

* Hist. of Exchequer, c. 12

of the next age, and particularly the monk of St Alban's. From his prolix history we may collect three material propositions as to the state of the English constitution during the long reign of Henry III.; a prince to whom the epithet of worthless seems best applicable; and who, without committing any flagrant crimes, was at once insincere, ill-judging, and pusillanimous. The intervention of such a reign was a very fortunate circumstance for public liberty; which might possibly have been crushed in its infancy, if an Edward had immediately succeeded to the throne of John.

1. The Great Charter was always considered as a fundamental law. But yet it was supposed to acquire additional security by frequent confirmation. This it received, with some not inconsiderable variation, in the first, second, and ninth years of Henry's reign. The last of these is in our present statute-book, and has never received any alterations; but Sir E. Coke reckons thirty-two instances wherein it has been solemnly ratified. Several of these were during the reign of Henry III., and were invariably purchased by the grant of a subsidy.* This prudent accommodation of parliament to the circumstances of their age not only made the law itself appear more inviolable, but established that correspondence between supply and redress, which for some centuries was the balance-spring of our constitution. The charter indeed was often grossly violated by their administration. Even Hubert de Burgh, of whom history speaks more favourably than of Henry's later favourites, though a faithful servant of the crown, seems, as is too often the case with such men, to have thought the king's honour and interest concerned in maintaining an unlimited prerogative.† The government was however much worse administered after his fall. From the great difficulty of compelling the king to observe the boundaries of law, the English clergy, to whom we are much indebted for their zeal in behalf of liberty during this reign, devised means of binding his conscience, and terrifying his imagination by religious sanctions. The solemn excommunication, accompanied with the most awful threats, pronounced against the violators of Magna Charta, is well known from our common histories. The king was a party to this ceremony, and swore to observe the charter. But Henry III., though a very devout person, had his own notions as to the validity of an oath that affected his power, and indeed passed his life in a series of perjuries. According to the creed of that age, a papal dispensation might annul any prior engagement; and he was generally on sufficiently good terms with Rome to obtain such an indulgence.

2. Though the prohibition of levying aids or escuages without consent of parliament had been omitted in all Henry's charters, an omission for which we can not assign any other motive than the disposition of his ministers to get rid of that restriction, yet neither one nor the other seem in fact to have been exacted at discretion throughout his reign. On the contrary, the barons frequently refused the aids, or rather subsidies, which his prodigality was always demanding. Indeed, it would probably have been impossible for the king, however frugal, stripped as he was of so many lucrative though oppressive prerogatives by the Great Charter, to support the expenditure of government from his own resources. Tallages on his demesnes, and especially on the rich and ill-affected city of London, he imposed without scruple; but it does not appear that he ever pretended to a right of general taxation. We may therefore take it for granted, that the clause in John's charter, though not expressly renewed, was still considered as of binding force. The king was often put to great inconvenience by the refusal of supply; and at one time was reduced to sell his plate and jewels, which the citizens of London buying, he was provoked to exclaim with envious spite against their riches, which he had not been able to exhaust.*

3. The power of granting money must of course imply the power of withholding it; yet this has sometimes been little more than a nominal privilege. But in this reign the English parliament exercised their right of refusal, or, what was much better, of conditional assent. Great discontent was expressed at the demand of a subsidy in 1237; and the king alleging that he had expended a great deal of money on his sister's marriage with the emperor, and also upon his own, the barons answered, that he had not taken their advice in those affairs, nor ought they to share the punishment of acts of imprudence they had not committed.† In 1241, a subsidy having been demanded

* Matt. Paris, p. 272. † Id., p. 284.

* M. Paris, p. 650.

† Quod hæc omnia sine consilio fidelium suorum facerat, nec debuerant esse pœnæ participes qui fuerant a culpâ immunes. p. 367

for the war in Poitou, the barons drew up a remonstrance, enumerating all the grants they had made on former occasions, but always on condition that the imposition should not be turned into precedent. Their last subsidy, it appears, had been paid into the hands of four barons, who were to expend it at their discretion for the benefit of the king and kingdom;* an early instance of parliamentary control over public expenditure. On a similar demand in 1244, the king was answered by complaints against the violation of the charter, the waste of former subsidies, and the maleadministration of his servants.† Finally, the barons positively refused any money; and he extorted 1500 marks from the city of London. Some years afterward they declared their readiness to burden themselves more than ever, if they could secure the observance of the charter; and requested that the justiciary, chancellor, and treasurer might be appointed with consent of parliament, according, as they asserted, to ancient custom, and might hold their offices during good behaviour.‡

Forty years of mutual dissatisfaction had elapsed, when a signal act of Henry's improvidence brought on a crisis which endangered his throne. Innocent IV., out of mere animosity against the family of Frederick II., left no means untried to raise up a competitor for the crown of Naples, which Manfred had occupied. Richard, earl of Cornwall, having been prudent enough to decline this speculation, the pope offered to support Henry's second son, Prince Edmund. Tempted by such a prospect, the silly king involved himself in irretrievable embarrassments by prosecuting an enterprise which could not possibly be advantageous to England, and upon which he entered without the advice of his parliament. Destitute himself of money, he was compelled to throw the expense of this new crusade upon the pope; but the assistance of Rome was never gratuitous, and Henry actually pledged his kingdom for the money which she might expend in a war for her advantage and his own.* He did not even want the effrontery to tell parliament in 1257, introducing his son Edmund as King of Sicily, that they were bound for the repayment of 14,000 marks, with interest. The pope had also, in furtherance of the Neapolitan project, conferred upon Henry the tithes of all benefices in England, as well as the first fruits of such as should be vacant.† Such a concession drew upon the king the implacable resentment of his clergy, already complaining of the cowardice or connivance that had during all his reign exposed them to the shameless exactions of Rome. Henry had now indeed cause to regret his precipitancy. Alexander IV., the reigning pontiff, threatened him not only with a revocation of the grant to his son, but with an excommunication and general interdict, if the money advanced on his account should not be immediately repaid,‡ and a Roman agent explained the demand to a parliament assembled at London. The sum required was so enormous, we are told, that it struck all the hearers with astonishment and horror. The nobility of the realm were indignant to think that one man's supine folly should thus bring them to ruin.§ Who can deny that measures beyond the ordinary course of the constitution were necessary to control so prodigal and injudicious a sovereign? Accordingly, the barons insisted that twenty-four persons should be nominated, half by the king and half by themselves, to reform the state of the kingdom. These were appointed on the meeting of the parliament at Oxford, after a prorogation.

* Matt. Paris, p. 515.

† Id., p. 563, 572. Matthew Paris's language is particularly uncourtly: rex cum instantissimè, ne dicam impudentissimè, auxilium pecuniare ab iis iterum postularet, toties læsi et illusi, contradixerunt ei unanimiter et uno ore in facie.

‡ De communi consilio regni, sicut ab antiquo consuetum et justum, p. 778. This was not so great an encroachment as it may appear. Ralph de Neville, bishop of Chichester, had been made chancellor in 1223, assensu totius regni; itaque scilicet ut non deponeretur ab ejus sigilli custodiâ nisi totius regni ordinante consensu et consilio, p. 266. Accordingly, the king demanding the great seal from him in 1236, he refused to give it up, alleging that, having received it in the general council of the kingdom, he could not resign it without the same authority, p. 363. And the parliament of 1248 complained that the king had not followed the steps of his predecessors in appointing these three great officers by their consent, p. 646. What had been in fact the practice of former kings, I do not know; but it is not likely to have been such as they represent. Henry, however, had named the Archbishop of York to the regency of the kingdom during his absence beyond sea in 1242, de consilio omnium comitum et baronum nostrorum et omnium fidelium nostrorum—Rymer, t. i., p. 400.

* Rymer, t. i., p. 771. † P. 813.

‡ Idem, p. 632. This inauspicious negotiation for Sicily, which is not altogether unlike that of James I. about the Spanish match, in its folly, bar success, and the dissatisfaction it occasioned a home, receives a good deal of illustration from documents in Rymer's collection.

§ Quantitas pecuniæ ad tantam ascendit summam, ut stuporem simul et horrorem in auribus generaret audientium. Doluit igitur nobilitas regni, se unius hominis ita confundi supinâ simplicitate.—M. Paris, p. 827.

The seven years that followed are a revolutionary period, the events of which we do not find satisfactorily explained by the historians of the time.* A king, divested of prerogatives by his people, soon appears even to themselves an injured party. And as the baronial oligarchy acted with that arbitrary temper which is never pardoned in a government that has an air of usurpation about it, the royalists began to gain ground, chiefly through the defection of some who had joined in the original limitations imposed on the crown, usually called the provisions of Oxford. An ambitious man, confident in his talents and popularity, ventured to display too marked a superiority above his fellows in the same cause. But neither his character, nor the battles of Lewes and Evesham, fall strictly within the limits of a constitutional history It is, however, important to observe, that even in the moment of success, Henry III. did not presume to revoke any part of the Great Charter. His victory had been achieved by the arms of the English nobility, who had, generally speaking, concurred in the former measures against his government, and whose opposition to the Earl of Leicester's usurpation was compatible with a steady attachment to constitutional liberty.†

Limitations of the prerogative proved from Bracton.

The opinions of eminent lawyers are undoubtedly, where legislative or judicial authorities fail, the best evidence that can be adduced in constitutional history. It will therefore be satisfactory to select a few passages from Bracton, himself a judge at the end of Henry III.'s reign, by which the limitation of prerogative by law will clearly appear to have been fully established. "The king," says he, "must not be subject to any man, but to God and the law; for the law makes him king. Let the king therefore give to the law what the law gives to him, dominion and power; for there is no king where will and not law bears rule."‡ "The king (in another place) can do nothing on earth, being the minister of God, but what he can do by law; nor is what is said (in the Pandects) any objection, that whatever the prince pleases shall be law: because, by the words that follow in that text, it appears to design not any mere will of the prince, but that which is established by the advice of his counsellors, the king giving his authority, and deliberation being had upon it."* This passage is undoubtedly a misrepresentation of the famous lex regia, which has ever been interpreted to convey the unlimited power of the people to their emperors.† But the very circumstance of so perverted a gloss put upon this text is a proof that no other doctrine could be admitted in the law of England. In another passage, Bracton reckons as superior to the king, "not only God and the law, by which he is made king, but his court of earls and barons; for the former (comites) are so styled as associates of the king, and whoever has an associate, has a master;‡ so that if the king were without a bridle, that is, the law, they ought to put a bridle upon him."§ Several other passages in Bracton might be produced to the same import; but these are sufficient to demonstrate the important fact, that however extensive or even indefinite might be the royal prerogative in the days of Henry III., the law was already its superior, itself but made part of the law, and was incompetent to overthrow it. It is true, that in this very reign the practice of dispensing with statutes by a non-obstante was introduced in imitation of the papal dispensations.‖ But this prerogative could only be exerted within certain limits, and however pernicious it may be justly thought, was, when thus understood and defined, not, strictly speaking, incompatible with the legislative sovereignty of parliament

The king's court.

In conformity with the system of France and other feudal countries, there was one standing council, which assisted the kings of England in the collection and management of their revenue, the administration of justice to suiters, and the despatch of all public business. This was styled the king's court, and held in his palace, or wherever he was personally present. It was composed of the great officers; the chief justiciary;¶ the chancellor, the con-

* The best account of the provisions of Oxford in 1260, and the circumstances connected with them, is found in the Burton Annals.—2 Gale. xv. Scriptores., p. 407. Many of these provisions were afterward enacted in the statute of Marlebridge.

† The Earl of Glocester, whose personal quarrel with Montfort had overthrown the baronial oligarchy wrote to the king in 1267, ut provisiones Oxoniæ teneri faciat per regnum suum, et ut promissa sibi apud Evesham de facto compleret.—Matt. Paris, p. 850.

‡ L. i. c. 8.

* L. iii., c. 9. These words are nearly copied from Glanvil's introduction to his treatise.

† See Selden ad Fletam p. 1046.

‡ This means, I suppose, that he who acts with the consent of others, must be in some degree restrained by them; but it is ill expressed.

§ L. ii., c. 16.

‖ M. Paris, p. 701.

¶ The chief justiciary was the greatest subject in England. Besides presiding in the king's court

stable, marshal, chamberlain, steward, and treasurer, with any others whom the king might appoint. Of this great court there was, as it seems, from the beginning, a particular branch, in which all matters relating to the revenue were exclusively transacted. This, though composed of the same persons, yet being held in a different part of the palace, and for different business, was distinguished from the king's court by the name of the exchequer; a separation which became complete when civil pleas were decided and judgments recorded in this second court.*

The court of exchequer.

It is probable, that in the age next after the conquest, few causes in which the crown had no interest were carried before the royal tribunals; every man finding a readier course of justice in the manor or county to which he belonged.† But, by degrees, this supreme jurisdiction became more familiar; and as it seemed less liable to partiality or intimidation than the provincial courts, suiters grew willing to submit to its expensiveness and inconvenience. It was obviously the interest of the king's court to give such equity and steadiness to its decisions as might encourage this disposition. Nothing could be more advantageous to the king's authority, nor, what perhaps was more immediately regarded, to his revenue; since a fine was always paid for leave to plead in his court, or to remove thither a cause commenced below. But because few, comparatively speaking, could have recourse to so distant a tribunal as that of the king's court, and perhaps also on account of the attachment which the English felt to their ancient right of trial by the neighbouring freeholders, Henry II. established itinerant justices, to decide civil and criminal pleas within each county.* This excellent institution is referred by some to the twenty-second year of that prince; but Madox traces it several years higher.† We have owed to it the uniformity of our common law, which would otherwise have been split, like that of France, into a multitude of local customs; and we still owe to it the assurance, which is felt by the poorest and most remote inhabitant of England, that his right is weighed by the same incorrupt and acute understanding, upon which the decision of the highest questions is reposed. The justices of assize seem originally to have gone their circuits annually; and as part of their duty was to set tallages upon royal towns, and superintend the collection of the revenue, we may be certain that there could be no long interval. This annual visitation was expressly confirmed by the twelfth section of Magna Charta, which provides also that no assize of novel disseisin, or mort d'ancestor, should be taken except in the shire where the lands in controversy lay. Hence this clause stood opposed on the one hand to the encroachments of the king's court, which might otherwise, by drawing pleas of land to itself, have defeated the suiter's right to a jury from the vicinage; and on the other, to those of the feudal aristocracy, who hated any interference of the crown to chastise their violations of law or control their own jurisdiction. Accordingly, while the confederacy of barons against

Institution of justices of assize.

and in the exchequer, he was originally, by virtue of his office, the regent of the kingdom during the absence of the sovereign; which, till the loss of Normandy, occurred very frequently. Writs, at such times, ran in his name, and were teste'd by him.—Madox, Hist. of Exchequer, p. 16. His appointment upon these temporary occasions was expressed, ad custodiendum loco nostro terram nostram Angliæ et pacem regni nostri; and all persons were enjoined to obey him tanquam justitiario nostro.—Rymer, t. i., p. 181. Sometimes, however, the king issued his own writ de ultra mare. The first time when the dignity of this office was impaired was at the death of John, when the justiciary, Hubert de Burgh, being besieged in Dover castle, those who proclaimed Henry III. at Glocester, constituted the Earl of Pembroke governor of the king and kingdom, Hubert still retaining his office. This is erroneously stated by Matthew Paris, who has misled Spelman in his Glossary; but the truth appears from Hubert's answer to the articles of charge against him, and from a record in Madox's Hist. of Exchequer, c. 21, note A, wherein the Earl of Pembroke is named rector regis et regni, and Hubert de Burgh justiciary. In 1241, the Archbishop of York was appointed to the regency during Henry's absence in Poitou, without the title of justiciary.—Rymer, t. i., p. 410. Still the office was so considerable, that the barons who met in the Oxford parliament of 1258 insisted that the justiciary should be annually chosen with their approbation. But the subsequent successes of Henry prevented this being established; and Edward I. discontinued the office altogether.

* For every thing that can be known about the Curia Regis, and especially this branch of it, the student of our constitutional history should have recourse to Madox's History of the Exchequer, and to the Dialogus de Scaccario, written in the time of Henry II. by Richard, bishop of Ely, though commonly ascribed to Gervase of Tilbury. This treatise he will find subjoined to Madox's work.

† Omnis causa terminetu comitatu, vel hundredo, vel halimoto socam habentium.—Leges Henr. I. c 9.

* Dialogus de Scaccario, p. 38.

† Hist. of Exchequer, c. iii. Lord Lyttleton thinks that this institution may have been adopted in imitation of Louis VI., who half a century before had introduced a similar regulation in his dominions.—Hist. of Henry II., vol. iii., p. 206.

Henry III. was in its full power, an attempt was made to prevent the regular circuits of the judges.*

The court of Common Pleas.

Long after the separation of the exchequer from the king's court, another branch was detached for the decision of private suits. This had its beginning, in Madox's opinion, as early as the reign of Richard I.† But it was completely established by Magna Charta. "Common Pleas," it is said in the fourteenth clause, "shall not follow our court, but be held in some certain place." Thus was formed the Court of Common Bench at Westminster, with full and, strictly speaking, exclusive jurisdiction over all civil disputes, where neither the king's interest, nor any matter savouring of a criminal nature, was concerned. For of such disputes neither the court of king's bench nor that of exchequer can take cognizance, except by means of a legal fiction, which, in the one case, supposes an act of force, and in the other, a debt to the crown.

Origin of the Common Law.

The principal officers of state, who had originally been effective members of the king's court, began to withdraw from it after this separation into three courts of justice, and left their places to regular lawyers; though the treasurer and chancellor of the exchequer have still seats on the equity side of that court, a vestige of its ancient constitution. It would indeed have been difficult for men bred in camps or palaces to fulfil the ordinary functions of judicature, under such a system of law as had grown up in England. The rules of legal decision among a rude people are always very simple; not serving much to guide, far less to control, the feelings of natural equity. Such were those which prevailed among the Anglo-Saxons; requiring no subtler intellect or deeper learning than the earl or sheriff at the head of his county-court might be expected to possess. But a great change was wrought in about a century after the conquest. Our English lawyers, prone to magnify the antiquity, like the other merits of their system, are apt to carry up the date of the common law, till, like the pedigree of an illustrious family, it loses itself in the obscurity of ancient time. Even Sir Matthew Hale does not hesitate to say, that its origin is as undiscoverable as that of Nile. But though some features of the common law may be distinguishable in Saxon times, while our limited knowledge prevents us from assigning many of its peculiarities to any determinable period, yet the general character and most essential parts of the system were of much later growth. The laws of the Anglo-Saxon kings, Madox truly observes, are as different from those collected by Glanvil as the laws of two different nations. The pecuniary compositions for crimes, especially for homicide, which run through the Anglo-Saxon code down to the laws ascribed to Henry I.,* are not mentioned by Glanvil. Death seems to have been the regular punishment of murder, as well as robbery. Though the investigation by means of ordeal was not disused in his time,† yet trial by combat, of which we find no instance before the conquest, was evidently preferred. Under the Saxon government, suits appear to have commenced, even before the king, by verbal or written complaint; at least, no trace remains of the original writ, the foundation of our civil procedure.‡ The descent of lands before the conquest was according to the custom of gavelkind, or equal partition among the children;§ in the age of Henry I. the eldest son took the principal fief to his own share;‖ in that of Glanvil he inherited all the lands held by knight service; but the descent of soccage lands depended on the particular custom of the estate. By the Saxon laws, upon the death of the son without issue, the father inherited;¶ by our common law, he is absolutely, and in every case, excluded. Lands were, in general, devisable by testament before the conquest; but not in

* Justiciarii regis Angliæ, qui dicuntur itineris, missi Herfordiam, pro suo exequendo officio repelluntur, allegantibus his qui regi adversabantur, ipsos contrà formam provisionum Oxoniæ nuper factarum venisse.—Chron. Nic. Trivet., A. D. 1260. I forget where I found this quotation.

† Hist. of Exchequer, c. 19. Justices of the bench are mentioned several years before Magna Charta. But Madox thinks the chief justiciary of England might preside in the two courts, as well as in the exchequer. After the erection of the Common Bench, the style of the superior court began to alter. It ceased by degrees to be called the king's court. Pleas were said to be held coram rege, or coram rege ubicunque fuerit. And thus the court of king's bench was formed out of the remains of the ancient curia regis.

* C. 70.

† A citizen of London, suspected of murder, having failed in the ordeal of cold water, was hanged by order of Henry II., though he offered 500 marks to save his life.—Hoveden, p. 566. It appears as if the ordeal were permitted to persons already convicted by the verdict of a jury. If they escaped in this purgation, yet, in cases of murder, they were banished the realm.—Wilkins, Leges Anglo-Saxon., p. 330. Ordeals were abolished about the beginning of Henry III.'s reign.

‡ Hickes, Dissert. Epistol., p. 8.

§ Leges Gulielmi, p. 225.

‖ Leges Henr. c. 70.

the time of Henry II., except by particular custom. These are sufficient samples of the differences between our Saxon and Norman jurisprudence; but the distinct character of the two will strike more forcibly every one who peruses successively the laws published by Wilkins, and the treatise ascribed to Glanvil. The former resemble the barbaric codes of the continent, and the capitularies of Charlemagne and his family; minute to an excess in apportioning punishments, but sparing and indefinite in treating of civil rights; while the other, copious, discriminating, and technical, displays the characteristics as well as unfolds the principles of English law. It is difficult to assert any thing decisively as to the period between the conquest and the reign of Henry II., which presents fewer materials for legal history than the preceding age; but the treatise denominated the Laws of Henry I., compiled at the soonest about the end of Stephen's reign,* bears so much of a Saxon character, that I should be inclined to ascribe our present common law to a date, so far as it is capable of any date, not much antecedent to the publication of Glanvil.† At the same time, since no kind of evidence attests any sudden and radical change in the jurisprudence of England, the question must be considered as left in great obscurity. Perhaps it might be reasonable to conjecture that the treatise called Leges Henrici Primi contains the ancient usages still prevailing in the inferior jurisdictions, and that of Glanvil the rules established by the Norman lawyers of the king's court, which would of course acquire a general recognition and efficacy, in consequence of the institution of justices holding their assizes periodically throughout the country.

Character and defects of the English law.

The capacity of deciding legal controversies was now only to be found in men who had devoted themselves to that peculiar study; and a race of such men arose, whose eagerness and even enthusiasm in the profession of the law were stimulated by the self-complacency of intellectual dexterity in thridding its intricate and thorny mazes. The Normans are noted in their own country for a shrewd and litigious temper, which may have given a character to our courts of justice in early times. Something too of that excessive subtlety, and that preference of technical to rational principles, which runs through our system, may be imputed to the scholastic philosophy which was in vogue during the same period, and is marked by the same features. But we have just reason to boast of the leading causes of these defects; an adherence to fixed rules, and a jealousy of judicial discretion, which have in no country, I believe, been carried to such a length. Hence precedents of adjudged cases, becoming authorities for the future, have been constantly noted, and form indeed almost the sole ground of argument in questions of mere law. But these authorities being frequently unreasonable and inconsistent, partly from the infirmity of all human reason, partly from the imperfect manner in which a number of unwarranted and incorrect reporters have handed them down, later judges grew anxious to elude by impalpable distinctions what they did not venture to overturn. In some instances, this evasive skill has been applied to acts of the legislature. Those who are moderately conversant with the history of our law will easily trace other circumstances that have co-operated in producing that technical and subtle system which regulates the course of real property. For as that formed almost the whole of our ancient jurisprudence, it is there that we must seek its original character. But much of the same spirit pervades every part of the law. No tribunal of a civilized people ever borrowed so little, even of illustration, from the writings of philosophers, or from the institutions of other countries. Hence law has been studied, in general, rather as an art than a science, with more solicitude to know its rules and distinctions, than to perceive their application to that for which all rules of law ought to have been established, the maintenance of public and private rights. Nor is there any reading more jejune and unprofitable to a philosophical mind than that of our ancient law-books. Later times have introduced other inconveniences, till the vast extent and multiplicity of our laws have become a practical evil of serious importance, and an evil which, between the timidity of the legislature on the one hand, and the selfish views of practitioners on the other, is likely to reach, in no long period, an intolerable excess. Deterred by an interested clamour against innovation from abrogating what is useless, simplifying what is complex or de-

* The decretum of Gratian is quoted in this treatise, which was not published in Italy till 1151.

† Madox, Hist. of Exch., p. 122, edit. 1711. Lord Lyttleton, vol. ii., p. 267, has given reasons for supposing that Glanvil was not the author of this treatise, but some clerk under his direction.

termining what is doubtful, and always more inclined to stave off an immediate difficulty by some patchwork scheme of modifications and suspensions, than to consult for posterity in the comprehensive spirit of legal philosophy, we accumulate statute upon statute, and precedent upon precedent, till no industry can acquire, nor any intellect digest the mass of learning that grows upon the panting student; and our jurisprudence seems not unlikely to be simplified in the worst and least honourable manner, a tacit agreement of ignorance among its professors. Much indeed has already gone into desuetude within the last century, and is known only as an occult science by a small number of adepts We are thus gradually approaching the crisis of a necessary reformation, when our laws, like those of Rome, must be cast into the crucible. It would be a disgrace to the nineteenth century, if England could not find her Tribonian.*

This establishment of a legal system, which must be considered as complete at the end of Henry III.'s reign, when the unwritten usages of the common law, as well as the forms and precedents of the courts, were digested into the great work of Bracton, might, in some respects, conduce to the security of public freedom. For, however highly the prerogative might be strained, it was incorporated with the law, and treated with the same distinguishing and argumentative subtlety as every other part of it. Whatever things, therefore, it was asserted, that the king might do, it was a necessary implication that there were other things which he could not do; else it were vain to specify the former. It is not meant to press this too far; since undoubtedly the bias of lawyers towards the prerogative was sometimes too discernible. But the sweeping maxims of absolute power, which servile judges and churchmen taught the Tudor and Stuart princes, seem to have made no progress under the Plantagenet line.

Whatever may be thought of the effect which the study of the law had upon the rights of the subject, it conduced materially to the security of good order by ascertaining the hereditary succession of the crown. Five kings out of seven that followed William the Conqueror were usurpers, according at least to modern notions. Of these, Stephen alone encountered any serious opposition upon that ground; and with respect to him, it must be remembered, that all the barons himself included, had solemnly sworn to maintain the succession of Matilda. Henry II. procured a parliamentary settlement of the crown upon his eldest and second sons; a strong presumption that their hereditary right was not absolutely secure.* A mixed notion of right and choice in fact prevailed as to the succession of every European monarchy The coronation oath and the form of popular consent then required were considered as more material, at least to perfect a title, than we deem them at present They gave seisin, as it were, of the crown, and, in cases of disputed pretensions, had a sort of judicial efficacy The Chronicle of Dunstaple says, concerning Richard I., that he was "elevated to the throne by hereditary right after a solemn election by the clergy and people:"† words that indicate the current principles of that age. It is to be observed, however, that Richard took upon him the exercise of royal prerogatives, without waiting for his coronation.‡ The succession of John has certainly passed in modern times for a usurpation. I do not find that it was considered as such by his own contemporaries on this side of the channel. The question of inheritance between an uncle and the son of

Hereditary right of the crown established.

* Whitelocke, just after the restoration, complains that "*Now* the volume of our statutes is grown or swelled to a great bigness." The volume! What would he have said to the monstrous birth of a volume triennially, filled with laws professing to be the deliberate work of the legislature, which every subject is supposed to read, remember, and understand! The excellent sense of the following sentences from the same passage may well excuse me from quoting them, and, perhaps, in this age of bigoted averseness to innovation, I have need of some apology for what I have ventured to say in the text. "I remember the opinion of a wise and learned statesman and lawyer (the Chancellor Oxenstiern) that multiplicity of written laws do but distract the judges, and render the law less certain; that where the law sets due and clear bounds between the prerogative royal and the rights of the people, and gives remedy in private causes, there needs no more laws to be increased, for thereby litigation will be increased likewise. It were a work worthy of a parliament, and cannot be done otherwise, to cause a review of all our statutes, to repeal such as they shall judge inconvenient to remain in force; to confirm those which they shall think fit to stand, and those several statutes which are confused, some repugnant to others, many touching the same matters, to be reduced into certainty, all of one subject into one statute, that perspicuity and clearness may appear in our written laws, which at this day few students or sages can find in them."– Whitelocke's Commentary on Parliamentary Writ, vol. i., p. 409.

* Lyttleton, vol. ii., p. 14..

† Iden., p. 42. Hæreditario jure promovendus in regnum, post cleri et populi solennem electionem

‡ Gul Neubrigensis, l. iv., c. 1.

his deceased elder brother was yet unsettled, as we learn from Glanvil, even in private succession.* In the case of sovereignties, which were sometimes contended to require different rules from ordinary patrimonies, it was, and continued long to be, the most uncertain point in public law. John's pretensions to the crown might therefore be such as the English were justified in admitting, especially as his reversionary title seems to have been acknowledged in the reign of his brother Richard.† If indeed we may place reliance on Matthew Paris, Archbishop Hubert, on this occasion, declared in the most explicit terms that the crown was elective, giving even to the blood royal no other preference than their merit might challenge.‡ Carte rejects this as a fiction of the historian; and it is certainly a strain far beyond the constitution, which, both before and after the conquest, had invariably limited the throne to one royal stock, though not strictly to its nearest branch. In a charter of the first year of his reign, John calls himself king "by hereditary right, and through the consent and favour of the church and people."§

It is deserving of remark, that during the rebellions against this prince and his son Henry III., not a syllable was breathed in favour of Eleanor, Arthur's sister, who, if the present rules of succession had been established, was the undoubted heiress of his right. The barons chose rather to call in the aid of Louis, with scarcely a shade of title, though with much better means of maintaining himself. One should think that men whose fathers had been in the field for Matilda could make no difficulty about female succession. But I doubt whether, notwithstanding that precedent, the crown of England was universally acknowledged to be capable of descending to a female heir. Great averseness had been shown by the nobility of Henry I. to his proposal of settling the kingdom on his daughter.‖ And from a remarkable passage which I shall produce in a note, it appears that even in the reign of Edward III. the succession was supposed to be confined to the male line.¶

At length, about the middle of the thirteenth century, the lawyers applied to the crown the same strict principles of descent which regulate a private inheritance. Edward I. was proclaimed immediately upon his father's death, though absent in Sicily. Something, however, of the old principle may be traced in this proclamation, issued in his name by the guardians of the realm, where he asserts the crown of England "to have devolved upon him by hereditary succession and the will of his nobles."* These last words were omitted in the proclamation of Edward II.;† since whose time the crown has been absolutely hereditary. The coronation oath, and the recognition of the people at that solemnity, are formalities which convey no right either to the sovereign or the people, though they may testify the duties of each.

English gentry destitute of exclusive privileges

I cannot conclude the present chapter without observing one most prominent and characteristic distinction between the constitution of England and that of every other country in Europe; I mean its refusal of civil privileges to the lower nobility, or those whom we denominate the gentry. In France, in Spain, in Germany, wherever, in short, we look, the appellations of nobleman and gentleman have been strictly synonymous. Those entitled to bear them by descent, by tenure of land, by office or royal creation, have formed a class distinguished by privileges inherent in their blood from ordinary freemen. Marriage with noble

* Glanvil, l. vii., c. 3. † Hoveden, p. 702.

‡ Hoveden, p. 165.

§ Jure hæreditario, et mediante tam cleri et populi consensu et favore.—Gurdon on Parliaments, p. 139.

‖ Lyttleton, vol. i., p. 162.

¶ This is intimated by the treaty made in 1339, for a marriage between the eldest son of Edward III. and the Duke of Brabant's daughter. Edward therein promises, that if his son should die before him, leaving male issue he will procure the consent of his barons, nobles, and cities (that is, of parliament; nobles here meaning knights, if the word has any distinct sense) for such issue to inherit the kingdom; and if he die leaving a daughter only, Edward or his heir shall make such provision for her as belongs to the daughter of a king.—Rymer, t. v., p. 114. It may be inferred from this instrument, that in Edward's intention, if not by the constitution, the Salique-law was to regulate the succession of the English crown. This law, it must be remembered, he was compelled to admit in his claim on the kingdom of France, though with a certain modification, which gave a pretext of title to himself.

* Ad nos regni gubernaculum successione hæreditariâ, ac procerum regni voluntate, et fidelitate nobis præstitâ sit devolutum.—Brady (History of England, vol. ii., Appendix, p. 1) expounds procerum voluntate to mean willingness, not will; as much as to say, they acted readily and without command. But in all probability it was intended to save the usual form of consent.

† Rymer, t. iii., p. 1. Walsingham, however, asserts that Edward II. ascended the throne non tam jure hæreditario quàm unanimi assensu procerum et magnatum, p. 95. Perhaps we should omit the word *non*, and he might intend to say, that the king had not only his hereditary title, but the free consent of his barons.

families, or the purchase of military fiefs, or the participation of many civil offices, were more or less interdicted to the commons of France and the empire. Of these restrictions, nothing, or next to nothing, was ever known in England. The law has never taken notice of gentlemen.* From the reign of Henry III. at least, the legal equality of all ranks below the peerage was, to every essential purpose, as complete as at present. Compare two writers nearly contemporary, Bracton with Beaumanoir, and mark how the customs of England are distinguishable in this respect. The Frenchman ranges the people under three divisions, the noble, the free, and the servile; our countryman has no generic class but freedom and villanage.† No restraint seems ever to have lain upon marriage; nor have the children even of a peer been ever deemed to lose any privilege by his union with a commoner. The purchase of lands held by knight-service was always open to all freemen. A few privileges indeed were confined to those who had received knighthood.‡ But, upon the whole, there was a virtual equality of rights among all the commoners of England. What is most particular is, that the peerage itself imparts no privilege except to its actual possessor. In every other country, the descendants of nobles cannot but themselves be noble, because their nobility is the immediate consequence of their birth. But though we commonly say that the blood of a peer is ennobled, yet this expression seems hardly accurate, and fitter for heralds than lawyers; since in truth nothing confers nobility but the actual descent of a peerage. The sons of peers, as we well know, are commoners, and totally destitute of any legal right beyond a barren precedence.

There is no part, perhaps, of our constitution so admirable as this equality of civil rights; this *isonomia*, which the philosophers of ancient Greece only hoped to find in democratical governments.* From the beginning our law has been no respecter of persons. It screens not the gentleman of ancient lineage from the judgment of an ordinary jury, nor from ignominious punishment. It confers not, it never did confer, those unjust immunities from public burdens which the superior orders arrogated to themselves upon the continent. Thus, while the privileges of our peers, as hereditary legislators of a free people, are incomparably more valuable and dignified in their nature, they are far less invidious in their exercise than those of any other nobility in Europe. It is, I am firmly persuaded, to this peculiarly democratical character of the English monarchy that we are indebted for its long permanence, its regular improvement, and its present vigour. It is a singular, a providential circumstance, that in an age when the gradual march of civilization and commerce was so little foreseen, our ancestors, deviating from the usages of neighbouring countries, should, as if deliberately, have guarded against that expansive force which, in bursting through obstacles improvidently opposed, has scattered havoc over Europe.

Causes of the equality among freemen in England.

This tendency to civil equality in the English law may, I think, be ascribed to several concurrent causes. In the first place, the feudal institutions were far less military in England than upon the continent. From the time of Henry II., the escuage, or pecuniary commutation for personal service, became almost universal. The armies of our kings were composed of hired troops, great part of whom certainly were knights and gentlemen, but who, serving for pay, and not by virtue of their birth or tenure, preserved nothing of the feudal character. It was not, however, so much for the ends of national as of private warfare, that the relation of lord and vassal was contrived. The rights which every baron in France possessed of redressing his own wrongs

* It is hardly worth while, even for the sake of obviating cavils, to notice as an exception the statute of 23 H. VI., c. 14, prohibiting the election of any who were not born gentlemen for knights of the shire. Much less should I have thought of noticing, if it had not been suggested as an objection, the provision of the statute of Merton, that guardians in chivalry shall not marry their wards to villeins or burgesses, to their disparagement. Wherever the distinctions of rank and property are felt in the customs of society, such marriages will be deemed unequal; and it was to obviate the tyranny of feudal superiors, who compelled their wards to accept a mean alliance, or to forfeit its price, that this provision of the statute was made. But this does not affect the proposition I had maintained as to the *legal* equality of commoners, any more than a report of a master in chancery at the present day, that a proposed marriage for a ward of the court was unequal to what her station in society appeared to claim, would invalidate the same proposition.

† Beaumanoir, c. 45. Bracton, l. i., c. 6.

‡ See for these, Selden's Titles of Honour, vol iii., p. 806.

* Πληθος αρχον, πρῶτον μεν ονομα καλλιστον εχει ισονομιαν, says the advocate of democracy in the discussion of forms of government which Herodotus (Thalia, c. 80) has put into the mouths of three Persian satraps, after the murder of Smerdis; a scene conceived in the spirit of Corneille

and those of his tenants by arms, rendered their connexion strictly military. But we read very little of private wars in England. Notwithstanding some passages in Glanvil, which certainly appear to admit their legality, it is not easy to reconcile this with the general tenure of our laws.* They must always have been a breach of the king's peace, which our Saxon lawgivers were perpetually striving to preserve, and which the conqueror and his sons more effectually maintained.† Nor can we trace many instances (some we perhaps may) of actual hostilities among the nobility of England after the conquest, except during such an anarchy as the reign of Stephen or the minority of Henry III. Acts of outrage and spoliation were indeed very frequent. The statute of Marlebridge, soon after the baronial wars of Henry III., speaks of the disseisins that had taken place during the late disturbances;‡ and thirty-five verdicts are said to have been given at one court of assize against Foulkes de Breauté, a notorious partisan, who commanded some foreign mercenaries at the beginning of the same reign:§ but these are faint resemblances of that wide-spreading devastation which the nobles of France and Germany were entitled to carry among their neighbours. The most prominent instance, perhaps, of what may be deemed a private war, arose out of a contention between the earls of Gloucester and Hereford, in the reign of Edward I., during which acts of extraordinary violence were perpetrated; but, far from its having passed for lawful, these powerful nobles were both committed to prison, and paid heavy fines.‖ Thus the tenure of knight-service was not in effect much more peculiarly connected with the profession of arms than that of soccage. There was nothing in the former condition to generate that high self-estimation which military habits inspire. On the contrary, the burdensome incidents of tenure in chivalry rendered soccage the more advantageous, though less honourable of the two.

In the next place, we must ascribe a good deal of efficacy to the old Saxon principles that survived the conquest of William, and infused themselves into our common law. A respectable class of free soccagers, having, in general, full rights of alienating their lands, and holding them probably at a small certain rent from the lord of the manor, frequently occur in Domesday Book. Though, as I have already observed, these were derived from the superior and more fortunate Anglo-Saxon ceorls, they were perfectly exempt from all marks of villanage both as to their persons and estates. Some have derived their name from the Saxon *soc*, which signifies a franchise, especially one of jurisdiction. And whatever may come of this etymology, which is not perhaps so well established as that from the French word *soc*, a ploughshare,* they undoubtedly were suiters to the court-baron of the lord, to whose *soc*, or right of justice, they belonged. They were consequently judges in civil causes, determined before the manorial tribunal.† Such privileges set

* I have modified this passage, in consequence of the just animadversion of a periodical critic. In the former edition I had stated too strongly the difference which I still believe to have existed between the customs of England and other feudal countries, in respect of private warfare.

† The penalties imposed on breaches of the peace in Wilkins's Anglo-Saxon laws are too numerous to be particularly inserted. One remarkable passage in Domesday appears, by mentioning a legal custom of private feuds in an individual manor, and there only among Welshmen, to afford an inference that it was an anomaly. In the royal manor of Archenfeld in Herefordshire, if one Welshman kills another, it was a custom for the relations of the slain to assemble and plunder the murderer and his kindred, and burn their houses until the corpse should be interred, which was to take place by noon on the morrow of his death. Of this plunder the king had a third part, and the rest they kept for themselves, p. 179.

‡ Stat. 52 H. III. § Matt. Paris, p 271.

‖ Rot Parl., vol. i., p. 70.

* It is not easy to decide between these two derivations of the words soccage and socman. On the one hand, the frequent recurrence in Domesday Book of the expression, socmanni de socâ Algari, &c., seems to lead us to infer that these words, so near in sound, were related to each other. Sommer (on Gavelkind, p. 13) is clearly for this derivation. But Bracton, l. ii., c. 35, derives soccage from the French soc, and this etymology is curiously illustrated by a passage in Blomefield's Hist. of Norfolk, vol. iii., p. 538 (folio). In the manor of Cawston, a mace with a brazen hand holding a ploughshare was carried before the steward, as a sign that it was held by soccage of the dutchy of Lancaster. Perhaps, however, this custom may be thought not sufficiently ancient to confirm Bracton's derivation.

† Territorial jurisdiction, the commencement of which we have seen before the conquest, was never so extensive as in governments of a more aristocratical character, either in criminal or civil cases. 1. In the laws ascribed to Henry I., it is said that all great offences could only be tried in the king's court, or by his commission, c. 10. Glanvil distinguishes the criminal pleas, which could only be determined before the king's judges, from those which belong to the sheriff. Treason, murder, robbery, and rape were of the former class; theft of the latter, l. xiv. The criminal jurisdiction of the sheriff is entirely taken away by Magna Charta, c. 17. Sir E. Coke says, the territorial franchises of infangthef and outfangthef "had some continuance afterward, but either by this act, or per des. studinem, for inconvenience

them greatly above the roturiers, or censiers of France. They were all Englishmen, and their tenure strictly English; which seems to have given it credit in the eyes of our lawyers, when the name of Englishman was affected even by those of Norman descent, and the laws of Edward the Confessor became the universal demand. Certainly Glanvil, and still more Bracton, treat the tenure in free soccage with great respect. And we have reason to think that this class of freeholders was very numerous, even before the reign of Edward I.

But, lastly, the change which took place in the constitution of parliament consummated the degradation, if we must use the word, of the lower nobility: I mean, not so much their attendance by representation instead of personal summons, as their election by the whole body of freeholders, and their separation, along with citizens and burgesses, from the house of peers. These changes will fall under consideration in the following chapter.

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these franchises within manors are antiquated and gone."—2 Inst., p. 31. The statute hardly seems to reach them; and they were certainly both claimed and exercised as late as the reign of Edward I. Blomefield mentions two instances, both in 1285, where executions for felony took place by the sentence of a court-baron. In these cases the lord's privilege was called in question at the assizes, by which means we learn the transaction; it is very probable that similar executions occurred in manors where the jurisdiction was not disputed.—(Hist. of Norfolk, vol. i., p. 313; vol. iii., p. 50.) Felonies are now cognizable in the greater part of boroughs; though it is usual, except in the most considerable places, to remit such as are not within benefit of clergy to the justices of jail delivery on their circuit. This jurisdiction, however, is given, or presumed to be given, by special charter, and perfectly distinct from that which was feudal and territorial. Of the latter some vestiges appear to remain in particular liberties, as for example the Soke of Peterborough; but most, if not all, of these local franchises have fallen, by right or custom, into the hands of justices of the peace. A territorial privilege somewhat analogous to criminal jurisdiction, but considerably more oppressive, was that of private jails. At the parliament of Merton, 1237, the lords requested to have their own prison for trespasses upon their parks and ponds, which the king refused.—Stat. Merton, c. 11. But several lords enjoyed this as a particular franchise; which is saved by the statute 5 H. IV., c. 10, directing justices of the peace to imprison no man, except in the common jail. 2. The civil jurisdiction of the court-baron was rendered insignificant not only by its limitation, in personal suits, to debts or damages not exceeding forty shillings, but by the writs of *tolt* and *pone*, which at once removed a suit for lands, in any stage of its progress before judgment, into the county court or that of the king. The statute of Marlebridge took away all appellant jurisdiction of the superior lord, for false judgment in the manorial court of his tenant, and thus aimed another blow at the feudal connexion.—52 H. III., c. 19. 3. The lords of the counties palatine of Chester and Durham, and the royal franchise of Ely, had not only a capital jurisdiction in criminal cases, but an exclusive cognizance of civil suits; the former still is retained by the bishops of Durham and Ely, though much shorn of its ancient extent by an act of Henry VIII. (27 H. VIII., c. 24), and administered by the king's justices of assize; the bishops or their deputies being put only on the footing of ordinary justices of the peace.—Id., s. 20.

PART III.

THE ENGLISH CONSTITUTION.

Reign of Edward I.—Confirmatio Chartarum. Constitution of Parliament—the Prelates—the Temporal Peers.—Tenure by Barony—its Changes.—Difficulty of the Subject.—Origin of Representation of the Commons.—Knights of Shires—their Existence doubtfully traced through the Reign of Henry III.—Question whether Representation was confined to Tenants in capite discussed.—State of English Towns at the Conquest and afterward—their Progress.—Representatives from them summoned to Parliament by Earl of Leicester.—Improbability of an earlier Origin.—Cases of St. Alban's and Barnstaple considered.—Parliaments under Edward I.—Separation of Knights and Burgesses from the Peers.—Edward II.—gradual progress of the Authority of Parliament traced through the Reigns of Edward III. and his successors down to Henry VI.—Privilege of Parliament—the early instances of it noticed.—Nature of Borough Representation.—Rights of Election—other particulars relative to Elections.—House of Lords.—Baronies by Tenure—by Writ.—Nature of the latter discussed.—Creation of Peers by Act of Parliament and by Patent.—Summons of Clergy to Parliament.—King's Ordinary Council—its Judicial and other Power.—Character of the Plantagenet Government.—Prerogative—its Excesses—erroneous Views corrected.—Testimony of Sir John Fortescue to the Freedom of the Constitution.—Causes of the superior Liberty of England considered.—State of Society in England.—Want of Police.—Villanage—its gradual extinction—latter years of Henry VI.—Regencies.—Instances of them enumerated.—Pretensions of the House of York, and War of the Roses.—Edward IV.—Conclusion.

THOUGH the undisputed accession of a prince like Edward the First to the throne of his father, does not seem so convenient a resting-place in history as one of those revolutions which interrupt the natural chain of events, yet the changes wrought during his reign make it properly an epoch in the progress of these inquiries. And, indeed, as ours is emphatically styled a government by king, lords, and commons, we cannot perhaps in strictness carry it farther back than the admission of the latter into parliament; so that, if the constant representation of the com

Accession of Edward I.

mons is to be referred to the age of Edward the First, it will be nearer the truth to date the English constitution from that than from any earlier era.

The various statutes affecting the law of property and administration of justice which have caused Edward I. to be named, rather hyperbolically, the English Justinian, bear no immediate relation to our present inquiries. In a constitutional point of view, the principal object is that statute entitled the Confirmation of the Charters, which was very reluctantly conceded by the king in the twenty-fifth year of his reign. I do not know that England has ever produced any patriots to whose memory she owes more gratitude than Humphrey Bohun, earl of Hereford and Essex, and Roger Bigod, earl of Norfolk. In the Great Charter the base spirit and deserted condition of John take off something from the glory of the triumph, though they enhance the moderation of those who pressed no farther upon an abject tyrant. But to withstand the measures of Edward, a prince unequalled by any who had reigned in England since the Conqueror for prudence, valour, and success, required a far more intrepid patriotism. Their provocations, if less outrageous than those received from John, were such as evidently manifested a disposition in Edward to reign without any control; a constant refusal to confirm the charters, which in that age were hardly deemed to bind the king without his actual consent; heavy impositions, especially one on the export of wool, and other unwarrantable demands. He had acted with such unmeasured violence towards the clergy, on account of their refusal of further subsidies, that, although the ill-judged policy of that class kept their interests too distinct from those of the people, it was natural for all to be alarmed at the precedent of despotism.* These encroachments made resistance justifiable, and the circumstances of Edward made it prudent. His ambition, luckily for the people, had involved him in foreign warfare, from which he could not recede without disappointment and dishonour. Thus was wrested from him that famous statute, inadequately denominated the Confirmation of the Charters, because it added another pillar to our constitution not less important than the Great Charter itself.*

Confirmation of the charters.

It was enacted by the 25 E. I., that the charter of liberties, and that of the forest, besides being explicitly confirmed,† should be sent to all sheriffs, justices in eyre, and other magistrates throughout the realm, in order to their publication before the people; that copies of them should be kept in cathedral churches, and publicly read twice in the year, accompanied by a solemn sentence of excommunication against all who should infringe them; that any judgment given contrary to these charters should be invalid, and holden for naught. This authentic promulgation, these awful sanctions of the Great Charter, would alone render the statute of which we are speaking illustrious. But it went a great deal farther. Hitherto the king's prerogative of levying money, by name of tallage or prise, from his towns and tenants in demesne, had passed unquestioned. Some impositions, that especially on the export of wool, affected all his subjects. It was now the moment to enfranchise the people, and give that security to private property which Magna Charta had given to personal liberty. By the 5th and 6th sections of this statute, "the aids, tasks, and prises" before taken are renounced as precedents; and the king "grants for him and his heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy church, as also to earls barons, and to all commonalty of the land, that for no business from hence forth we shall take such manner of aids tasks, nor prises, but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed." The toll upon wool, so far as levied by the king's mere prerogative, is expressly released by the seventh section.‡

* The fullest account we possess of these domestic transactions from 1294 to 1298 is in Walter Hemingford, one of the historians edited by Hearne, p. 52—168. They have been vilely perverted by Carte, but extremely well told by Hume, the first writer who had the merit of exposing the character of Edward I. See too Knyghton, in Twysden's Decem Scriptores, col. 2492.

* Walsingham, in Camden's Scriptores Rer. Anglicarum, p. 71—73.

† Edward would not confirm the charters, notwithstanding his promise, without the words salvo jure coronæ nostræ; on which the two earls retired from court. When the confirmation was read to the people at St. Paul's, says Hemingford, they blessed the king on seeing the charters with the great seal affixed: but when they heard the captious conclusion, they cursed him instead. At the next meeting of parliament, the king agreed to omit these insidious words, p. 168.

‡ The supposed statute, De Tallagio non concedendo, is considered by Blackstone (Introduction to Charters, p. 67) as merely an abstract of the Confirmatio Chartarum. By that entitled Articuli super Chartas, 28 Edw. I., a court was erected

Constitution of parliament.

We come now to a part of our subject exceedingly important, but more intricate and controverted than any other, the constitution of parliament. I have taken no notice of this in the last section, in order to present uninterruptedly to the reader the gradual progress of our legislature down to its complete establishment under the Edwards. No excuse need be made for the dry and critical disquisition of the following pages; but among such obscure inquiries, I cannot feel myself as secure from error as I certainly do from partiality.

The spiritual peers.

One constituent branch of the great councils, held by William the Conqueror and all his successors, was composed of the bishops, and the heads of religious houses holding their temporalities immediately of the crown. It has been frequently maintained, that these spiritual lords sat in parliament only by virtue of their baronial tenure. And certainly they did all hold baronies, which, according to the analogy of lay peerages, were sufficient to give them such a share in the legislature. Nevertheless, I think that this is rather too contracted a view of the rights of the English hierarchy, and, indeed, by implication, of the peerage. For a great council of advice and assent in matters of legislation or national importance was essential to all the northern governments. And all of them, except perhaps the Lombards, invited the superior ecclesiastics to their councils; not upon any feudal notions, which at that time had hardly begun to prevail, but chiefly as representatives of the church and of religion itself; next, as more learned and enlightened counsellors than the lay nobility; and in some degree, no doubt, as rich proprietors of land. It will be remembered also that ecclesiastical and temporal affairs were originally decided in the same assemblies, both upon the continent and in England. The Norman conquest, which destroyed the Anglo-Saxon nobility, and substituted a new race in their stead, could not affect the immortality of church possessions. The bishops of William's age were entitled to sit in his councils by the general custom of Europe, and by the common law of England,* which the conquest did not overturn. Some smaller arguments might be urged against the supposition that their legislative rights are merely baronial; such as that the guardian of the spiritualities was commonly summoned to parliament during the vacancy of a bishopric, and that the five sees created by Henry VIII. have no baronies annexed to them;* but the former reasoning appears less technical and confined.†

every county, of three knights or others, to be elected by the commons of the shire, whose sole province was to determine offences against the two charters, with power of punishing by fine and imprisonment; but not to extend to any case wherein the remedy by writ was already provided.

* Hody (Treatise on Convocations, p. 26) states the matter thus: in the Saxon times all bishops and abbots sat and voted in the state councils or parliament as such, and not on account of their tenures. After the conquest, the abbots sat there not as such, but by virtue of their tenures as barons; and the bishops sat in a double capacity, as bishops and as barons.

* Hody, p. 128.

† It is rather a curious speculative question, and such only, we may presume, it will long continue, whether bishops are entitled, on charges of treason or felony, to a trial by the peers. If this question be considered either theoretically or according to ancient authority, I think the affirmative proposition is beyond dispute. Bishops were at all times members of the great national council, and fully equal to lay lords in temporal power as well as dignity. Since the conquest, they have held their temporalities of the crown by a baronial tenure, which, if there be any consistency in law, must unequivocally distinguish them from commoners; since any one holding by barony might be challenged on a jury, as not being the peer of the party whom he was to try. It is true that they take no share in the judicial power of the house of lords in cases of treason or felony; but this is merely in conformity to those ecclesiastical canons which prohibited the clergy from partaking in capital judgment, and they have always withdrawn from the house on such occasions under a protestation of their right to remain. Had it not been for this particularity, arising wholly out of their own discipline, the question of their peerage could never have come into dispute. As for the common argument, that they are not tried as peers because they have no inheritable nobility, I consider it as very frivolous; since it takes for granted the precise matter in controversy, that an inheritable nobility is necessary to the definition of peerage, or to its incidental privileges.

If we come to constitutional precedents, by which, when sufficiently numerous and unexceptionable, all questions of this kind are ultimately to be determined, the weight of ancient authority seems to be in favour of the prelates. In the fifteenth year of Edward III. (1340), the king brought several charges against Archbishop Stratford. He came to parliament with a declared intention of defending himself before his peers. The king insisted upon his answering in the court of exchequer. Stratford, however, persevered; and the house of lords, by the king's consent, appointed twelve of their number, bishops, earls, and barons, to report whether peers ought to answer criminal charges in parliament and not elsewhere. This committee reported to the king in full parliament that the peers of the land ought not to be arraigned nor put on trial, except in parliament and by their peers. The archbishop upon this prayed the king, that inasmuch as he had been notoriously defamed, he might be arraigned in full parliament before the peers and there make answer; which

Nex to these spiritual lords are the earls and barons, or lay peerage of England The former dignity was perhaps not so merely official as in the Saxon times, although the earl was entitled to the third penny of all emoluments arising from the administration of justice in the county-courts, and might, perhaps command the militia of his county when it was called forth.* Every earl was also a baron, and held an honour or barony of the crown, for which he paid a higher relief than an ordinary baron, probably on account of the profits of his e rldom. I

request the king granted.—Rot. Parl., vol. ii., p. 127. Collier's Eccles. Hist., vol. i., p. 543. The proceedings against Stratford went no farther, but I think it impossible not to admit that his right to trial as a peer was fully recognised both by the king and lords.

This is however the latest, and perhaps the only instance of a prelate's obtaining so bigh a privilege. In the preceding reign of Edward II., if we can rely on the account of Walsingham (p. 119), Adam Orleton, the factious bishop of Hereford. had first been arraigned before the house of lords, and subsequently convicted by a common jury; but the transaction was of a singular nature, and the king might probably be influenced by the difficulty of obtaining a conviction from the temporal peers, of whom many were disaffected to him, in a case where privilege of clergy was vehemently claimed. But about 1357, a bishop of Ely, being accused of harbouring one guilty of murder, though he demanded a trial by the peers, was compelled to abide the verdict of a jury.—Collier, p. 557. In the 31st of Edward III. (1358), the abbot of Missenden was hanged for coining.—2 Inst., p. 635. The abbot of this monastery appears from Dugdale to have been summoned by writ, in the 19th of Henry III. If he actually held by barony, I do not perceive any strong distinction between his case and that of a bishop. The leading precedent, however, and that upon which lawyers principally found their denial of this privilege to the bishops, is the case of Fisher, who was certainly tried before an ordinary jury; nor am I aware that any remonstrance was made by himself, or compla by his friends, upon this ground. Cranmer was eated in the same manner; and from these tw being the most recent precedents, though i ather of them in the best of times, the great plurality of law-books have drawn a conclusion that bishops are not entitled to trial by the temporal peers. Nor can there be much doubt that, whenever the occasion shall occur, this will be the decision of the house of lords.

There are two peculiarities, as it may naturally appear, in the abovementioned resolutions of the lords in Stratford's case. The first is, that they claim to be tried, not only before their peers, but in parliament. And in the case of the Bishop of Ely, it is said to have been objected to his claim of trial by his peers, that parliament was not then sitting (Collier, ubi sup.). It is most probable, therefore, that the court of the lord high steward, for the special purpose of trying a peer, was of more recent institution; as appears also from Sir E. Coke's expressions.—4 Inst., p. 58. The second circumstance that may strike a reader is, that the lords assert their privilege in all criminal cases, not distinguishing misdemeanors from treasons and felonies. But in this they were undoubtedly warranted by the clear language of Magna Charta, which makes no distinction of the kind. The practice of trying a peer for misdemeanors by a jury of commoners, concerning the origin of which I can say nothing, is one of those anomalies which too often render our laws capricious and unreasonable in the eyes of impartial men.

Since writing the above note I have read Stillingfleet's treatise on the judicial power of the bishops in capital cases; a right which though now, I think, abrogated by non-claim and a course of contrary precedents, he proves beyond dispute to have existed by the common law and constitutions of Clarendon, to have been occasionally exercised, and to have been only suspended by their voluntary act In the course of this argument he treats of the peerage of the bishops, and produces abundant evidence from the records of parliament that they were styled peers, for which, though convinced from general recollection, I had not leisure or disposition to search. But if any doubt should remain, the statute 25 E. III., c. 6, contains a legislative declaration of the peerage of bishops. The whole subject is discussed with much perspicuity and force by Stillingfleet, who seems however not to press very greatly the right of trial by peers, aware no doubt of the weight of opposite precedents.—(Stilling fleet's Works, vol. iii., p. 820.) In one distinction, that the bishops vote in their judicial functions as barons, but in legislation as magnates, which Warburton has brought forward as his own in the Alliance of Church and State, Stillingfleet has perhaps not taken the strongest ground, nor sufficiently accounted for their right of sitting in judgment on the impeachment of a commoner. Parliamentary impeachment, upon charges of high public crimes, seems to be the exercise of a right inherent in the great council of the nation, some traces of which appear even before the conquest (Chron. Sax., p. 164, 169); independent of and superseding that of trial by peers, which, if the 29th section of Magna Charta be strictly construed, is only required upon endictments at the king's suit. And this consideration is of great weight in the question still unsettled, whether a commoner can be tried by the lords upon an impeachment for treason.

The treatise of Stillingfleet was written on occasion of the objection raised by the commons to the bishops voting on the question of Lord Danby's pardon, which he pleaded in bar of his impeachment. Burnet seems to suppose that their right of final judgment had never been defended, and confounds judgment with sentence. Mr. Hargrave, strange to say, has made a much greater blunder, and imagined that the question related to their right of voting on a bill of attainder, which no one, I believe, ever disputed.—Notes on Co. Litt., 13a b.

* Madox, Baronia Anglica, p. 138. Dialogus de Scaccario, l. i., c. 17. Lyttleton's Henry II., vol. ii., p. 217. The last of these writers supposes, contrary to Selden, that the earls continued to be governors of their counties under Henry II. Stephen created a few titular earls, with grants of crown lands to support them; but his successor resumed the grants, and deprived them of their earldoms.

In Rymer's Fœdera, vol. i., p. 3, we find a grant of Matilda, creating Milo of Glocester earl of Hereford, with the moat and castle of that city in fee to him and his heirs, the third penny of the rent of the city, and of the pleas in the county, three manors and a forest, and the service of three tenants in chief, with all their fiefs, to be held with all privileges and liberties as fully as ever any earl in England had possessed them.

will not pretend to say whether titular earldoms, absolutely distinct from the lieutenancy of a county, were as ancient as the conquest, which Madox seems to think, or were considered as irregular, so late as Henry II., according to Lord Lyttleton. In Dugdale's Baronage, I find none of this description in the first Norman reigns, for even that of Clare was connected with the local earldom of Hertford

Question as to the nature of baronies.

It is universally agreed, that the only baronies known for two centuries after the conquest were incident to the tenure of land held immediately from the crown. There are, however, material difficulties in the way of rightly understanding their nature, which ought not to be passed over, because the consideration of baronial tenures will best develop the formation of our parliamentary system. Two of our most eminent legal antiquaries, Selden and Madox, have entertained different opinions as to the characteristics and attributes of this tenure.

Theory of Selden;

According to the first, every tenant in chief by knight-service was an honorary or parliamentary baron by reason of his tenure. All these were summoned to the king's councils, and were peers of his court. Their baronies, or honours, as they were frequently called, consisted of a number of knight's fees, that is, of estates, from each of which the feudal service of a knight was due; not fixed to thirteen fees and a third, as has been erroneously conceived, but varying according to the extent of the barony, and the reservation of service at the time of its creation. Were they more or fewer, however, their owner was equally a baron, and summoned to serve the king in parliament with his advice and judgment, as appears by many records and passages in history.

But about the latter end of John's reign, some only of the most eminent tenants in chief were summoned by particular writs; the rest by one general summons through the sheriffs of their several counties. This is declared in the Great Charter of that prince, wherein he promises that whenever an aid or scutage shall be required, faciemus summoneri archiepiscopos, episcopos, abbates, comites et majores barones regni sigillatim per literas nostras. Et prætcrea faciemus summoneri in generali per vicecomites et ballivos nostros omnes alios qui in capite tenent de nobis. Thus the barons are distinguished from other tenants in chief, as if the former name were only applicable to a particular number of the king's immediate vassals. But it is reasonable to think, that before this charter was made, it had been settled by the law of some other parliament, how these greater barons should be distinguished from the lesser tenants in chief; else what certainty could there be in an expression so general and indefinite? And this is likely to have proceeded from the pride with which the ancient and wealthy barons of the realm would regard those newly created by grants of escheated honours, or those decayed in estate, who yet were by their tenures on an equality with themselves. They procured, therefore, two innovations in their condition; first, that these inferior barons should be summoned generally by the sheriff, instead of receiving their particular writs, which made an honorary distinction; and next, that they should pay relief, not as for an entire barony, one hundred marks; but at the rate of five pounds for each knight's fee which they held of the crown. This changed their tenure to one by mere knight-service, and their denomination to tenants in chief. It was not difficult afterward for the greater barons to exclude any from coming to parliament as such, without particular writs directed to them, for which purpose some law was probably enacted in the reign of Henry III. If indeed we could place reliance on a nameless author whom Camden has quoted, this limitation of the peerage to such as were expressly summoned depended upon a statute made soon after the battle of Evesham. But no one has ever been able to discover Camden's authority, and the change was probably of a much earlier date.*

Such is the theory of Selden, which, if it rested less upon conjectural alterations in the law, would undoubtedly solve some material difficulties that occur in the opposite view of the subject. According to Madox, tenure by knight's-service in chief was always distinct from that by barony. It is not easy, however, to point out the characteristic differences of the two; nor has that eminent antiquary, in his large work, the Baronia Anglica, laid down any definition, or attempted to explain the real nature of a barony. The distinction could not consist in the number of knight's fees; for the barony of Hwayton consisted of only three;† while John de Baliol held thirty fees by mere

of Madox,

and observations upon both.

* Selden's Works, vol. iii., p. 717-743

† Lyttleton's Henry II., vol. ii., p. 212

knight-service. Nor does it seem to have consisted in the privilege or service of attending parliament, since all tenants in chief were usually summoned. But whatever may have been the line between these modes of tenure, there seems complete proof of their separation long before the reign of John. Tenants in chief are enumerated distinctly from earls and barons in the charter of Henry I. Knights, as well as barons, are named as present in the parliament of Northampton in 1165, in that held at the same town in 1176, and upon other occasions.* Several persons appear in the Liber Niger Scaccarii, a roll of military tenants made in the age of Henry II., who held single knight's fees of the crown. It is, however, highly probable, that in a lax sense of the word, these knights may sometimes have been termed barons. The author of the Dialogus de Scaccario speaks of those holding greater or lesser baronies, including, as appears by the context, all tenants in chief.† The former of these seem to be the majores barones of King John's Charter. And the secundæ dignitatis barones, said by a contemporary historian to have been present in the parliament of Northampton, were in all probability no other than the knightly tenants of the crown.‡ For the word baro, originally meaning only a man, was of very large significance, and is not unfrequently applied to common freeholders, as in the phrase of court-baron. It was used too for the magistrates or chief men of cities, as it is still for the judges of the exchequer, and the representatives of the Cinque-Ports.

The passage, however, before cited from the Great Charter of John affords one spot of firm footing in the course of our progress. Then, at least, it is evident that all tenants in chief were entitled to their summons; the greater barons by particular writs, the rest through one directed to their sheriff. The epoch when all, who, though tenants in chief, had not been actually summoned, were deprived of their right of attendance in parliament, is again involved in uncertainty and conjecture. The unknown writer quoted by Camden seems not sufficient authority to establish his assertion, that they were excluded by a statute made after the battle of Evesham. The principle was most likely acknowledged at an earlier time. Simon de Montfort summoned only twenty-three temporal peers to his famous parliament In the year 1255, the barons complained that many of their number had not received their writs, according to the tenour of the charter, and refused to grant an aid to the king till they were issued.*

But it would have been easy to disappoint this mode of packing a parliament, if an unsummoned baron could have sat by mere right of his tenure. The opinion of Selden, that a law of exclusion was enacted towards the beginning of Henry's reign, is not liable to so much objection. But perhaps it is unnecessary to frame an hypothesis of this nature. Writs of summons might probably be older than the time of John;† and when this had become the customary and regular preliminary of a baron's coming to parliament, it was a natural transition to look upon it as an indispensable condition; in times when the prerogative was high, the law unsettled, and the service in parliament deemed by many still more burdensome than honourable. Some omissions in summoning the king's tenants to former parliaments may perhaps have produced the abovementioned provision of the Great Charter, which had a relation to the imposition of taxes, wherein it was deemed essential to obtain a more universal consent than was required in councils held for state, or even for advice.‡

Whether mere tenants in chief attended parliament under Henry III.

It is not easy to determine how long the inferior tenants in chief continued to sit personally in parliament. In the charters of Henry III., the clause which we have been considering is omitted: and I think there is no express proof remaining, that the sheriff was ever directed to summon the king's military tenants within his county in the manner which the charter

* Hody on Convocations, p. 222, 234

† Lib. ii., c. 9.

‡ Hody and Lord Lyttleton maintain these "barons of the second rank" to have been the subvassals of the crown; tenants of the great barons, to whom the name was sometimes improperly applied. This was very consistent with their opinion, that the commons were a part of parliament at that time. But Hume, assuming at once the truth of their interpretation in this instance, and the falsehood of their system, treats it as a deviation from the established rule, and a proof of the unsettled state of the constitution

* M. Paris, p. 785. The barons even tell the king that this was contrary to *his* charter, in which nevertheless the clause to that effect, contained in his father's charter, had been omitted

† Henry II., in 1175, forbade any of those who had been concerned in the late rebellion to come to his court without a particular summons.—Carte, vol. ii., p. 249.

‡ Upon the subject of tenure by barony, beside the writers already quoted, see West's Inquiry into the Method of creating Peers, and Carte's History of England, vol. ii., p. 247.

of John required It appears, however, that they were in fact members of parliament on many occasions during Henry's reign, which shows that they were summoned either by particular writs or through the sheriff, and the latter is the more plausible conjecture. There is indeed great obscurity as to the constitution of parliament in this reign; and the passages which I am about to produce may lead some to conceive that the freeholders were *represented* even from its beginning. I rather incline to a different opinion.

In the Magna Charta of 1 Henry III., it is said: Pro hâc donatione et concessione . . . . archiepiscopi, episcopi, comites, barones, milites, et liberê tenentes, et omnes de regno nostro dederunt nobis quintam decimam partem omnium bonorum suorum mobilium.* So in a record of 18 Henry III.: Comites, et barones, et omnes alii de toto regno nostro Angliæ, spontaneâ voluntate suâ concesserunt nobis efficax auxilium.† The largeness of these words is, however, controlled by a subsequent passage, which declares the tax to be imposed ad mandatum omnium comitum et baronum et omnium aliorum *qui de nobis tenent in capite*. And it seems to have been a general practice to assume the common consent of all ranks to that which had actually been agreed by the higher. In a similar writ, 21 Henry III., the ranks of men are enumerated specifically: archiepiscopi, episcopi, abbates, priores, et clerici terras habentes quæ ad ecclesias suas non pertinent, comites, barones, milites, et liberi homines, pro se et suis villanis, nobis concesserunt in auxilium tricesimam partem omnium mobilium.‡ In the close roll of the same year, we have a writ directed to the archbishops, bishops, abbots, priors, earls, barons, knights, and freeholders (liberi homines) of Ireland, in which an aid is desired of them; and it is urged, that one had been granted by his fideles Angliæ.§

But this attendance in parliament of inferior tenants in chief, some of them too poor to have received knighthood, grew insupportably vexatious to themselves, and was not well liked by the king. He knew them to be dependant upon the barons, and dreaded the confluence of a multitude who assumed the privilege of coming in arms to the appointed place. So inconvenient and mischievous a scheme could not long subsist among an advancing people, and fortunately the true remedy was discovered with little difficulty.

Origin and progress of parliamentary representation.

The principle of representation, in its widest sense, can hardly be unknown to any government not purely democratical. In almost every country the sense of the whole is understood to be spoken by a part, and the decisions of a part are binding upon the whole. Among our ancestors, the lord stood in the place of his vassals, and, still more unquestionably, the abbot in that of his monks. The system indeed of ecclesiastical councils, considered as organs of the church, rested upon the principle of a virtual or an express representation, and had a tendency to render its application to national assemblies more familiar.

The first instance of actual representation which occurs in our history is only four years after the conquest: when William, if we may rely on Hoveden, caused twelve persons skilled in the customs of England to be chosen from each county who were sworn to inform him rightly of their laws; and these, so ascertained, were ratified by the consent of the great council. This Sir Matthew Hale asserts to be "as sufficient and effectual a parliament as ever was held in England."* But there is no appearance that these twelve deputies of each county were invested with any higher authority than that of declaring their ancient usages. No stress can be laid, at least, on this insulated and anomalous assembly, the existence of which is only learned from an historian of a century later.

We find nothing that can arrest our attention, in searching out the origin of county representation, till we come to a writ in the fifteenth year of John, directed to all the sheriffs in the following terms: Rex Vicecomiti N., salutem. Præcipimus tibi quod omnes milites ballivæ tuæ qui summoniti fuerunt esse apud Oxoniam ad Nos a die Omnium Sanctorum in quindecim dies venire facias cum armis suis: corpora vero baronum sine armis singulariter, et *quatuor discretos milites* de comitatu tuo, illuc venire facias ad eundem terminum, ad loquendum nobiscum de negotiis regni nostri. For the explanation of this obscure writ, I must refer to what Prynne†

* Hody on Convocations, p. 293.
† Brady, Introduction to History of England, Appendix, p. 43.
‡ Brady's History of England, vol. i., Appendix, p. 182.
§ Brady's Introduction, p. 94.

* Hist. of Common Law, vol. i., p. 202.
† 2 Prynne's Register, p. 16.

nas said; but it remains problematical, whether these four knights (the only clause which concerns our purpose) were to be elected by the county, or returned, in the nature of a jury, at the discretion of the sheriff. Since there is no sufficient proof whereon to decide, we can only say with hesitation, that there *may* have been an instance of county representation in the fifteenth year of John.

We may next advert to a practice, of which there is very clear proof in the reign of Henry III. Subsidies granted in parliament were assessed, not as in former times, by the justices upon their circuits, but by knights freely chosen in the county-court. This appears by two writs, one of the fourth and one of the ninth year of Henry III.* At a subsequent period, by a provision of the Oxford parliament, in 1258, every county elected four knights to inquire into grievances, and deliver their inquisition into parliament.†

The next writ now extant that wears the appearance of parliamentary representation is in the thirty-eighth of Henry III. This, after reciting that the earls, barons, and other great men (cæteri magnates) were to meet at London three weeks after Easter, with horses and arms, for the purpose of sailing into Gascony, requires the sheriff to compel all within his jurisdiction, who hold twenty pounds a year of the king in chief, or of those in ward of the king, to appear at the same time and place. And that besides those mentioned he shall cause to come before the king's council at Westminster, on the fifteenth day after Easter, two good and discreet knights of his county, whom the men of the county shall have chosen for this purpose, in the stead of all and each of them, to consider, along with the knights and other counties, what aid they will grant the king in such an emergency.‡ In the principle of election, and in the object of the assembly, which was to grant money, this certainly resembles a summons to parliament. There are indeed anomalies, sufficiently remarkable upon the face of the writ, which distinguish this meeting from a regular parliament. But when the scheme of obtaining money from the commons of shires through the consent of their representatives had once been entertained, it was easily applicable to more formal councils of the nation.

A few years later there appears another writ analogous to a summons. During the contest between Henry III. and the confederate barons in 1261, they presumed to call a sort of parliament, summoning three knights out of every county, secum tractaturos super communibus negotiis regni. This we learn only by an opposite writ, issued by the king, directing the sheriff to enjoin these knights who had been convened by the earls of Leicester and Glocester to their meeting at St. Alban's, that they should repair instead to the king at Windsor, and to no other place, nobiscum super præmissis colloquium habituros * It is not absolutely certain that these knights were elected by their respective counties. But even if they were so, this assembly has much less the appearance of a parliament than that in the thirty-eighth of Henry III.

At length, in the year 1265, the forty ninth of Henry III., while he was a captive in the hands of Simon de Montfort, writs were issued in his name to all the sheriffs, directing them to return two knights for the body of their county with two citizens or burgesses for every city and borough contained within it. This therefore is the epoch at which the representation of the commons becomes indisputably manifest, even should we reject altogether the more equivocal instances of it which have just been enumerated.

Whether the knights were elected by freeholders in general.

If, indeed, the knights were still elected by none but the king's military tenants, if the mode of representation was merely adopted to spare them the inconvenience of personal attendance, the immediate innovation in our polity was not very extensive. This is an interesting, but very obscure topic of inquiry. Spelman and Brady, with other writers, have restrained the original right of election to tenants in chief, among whom, in process of time, those holding under mesne lords, not being readily distinguishable in the hurry of an election, contrived to slide in, till at length their encroachments were rendered legitimate by the statute 7 H. IV., c. 15, which put all suiters to the county-court on an equal footing as to the elective franchise. The argument on this side might be plausibly urged with the following reasoning.

The spirit of a feudal monarchy, which compelled every lord to act by the advice and assent of his immediate vassals, established no relation between him and those who held nothing at his hands

* Brady's Introduction, Appendix, pp. 41 and 44.
† Brady's Hist. of England, vol. i., Appendix, p. 227
‡ 2 Prynne, p. 23.

* 2 Prynne, p. 27

They were included, so far as he was concerned, in their superiors; and the feudal incidents were due to him from the whole of his vassal's fief, whatever tenants might possess it by sub-infeudation. In England, the tenants in chief alone were called to the great councils before representation was thought of, as is evident both by the charter of John and by the language of many records; nor were any others concerned in levying aids or escuages, which were only due by virtue of their tenure. These military tenants were become in the reign of Henry III. far more numerous than they had been under the Conqueror. If we include those who held of the king ut de honore, that is, the tenants of baronies escheated or in ward, who may probably have enjoyed the same privileges, being subject, in general, to the same burdens, their number will be greatly augmented, and form no inconsiderable portion of the freeholders of the kingdom. After the statute commonly called Quia emptores in the eighteenth of Edward I., they were likely to increase much more, as every licensed alienation of any portion of a fief by a tenant in chief would create a new freehold immediately depending upon the crown. Many of these tenants in capite held very small fractions of knight's fees, and were consequently not called upon to receive knighthood. They were plain freeholders, holding in chief, and the liberi homines or liberè tenentes of those writs which have been already quoted. The common form indeed of writs to the sheriff directs the knights to be chosen de communitate comitatûs. But the word communitas, as in boroughs, denotes only the superior part: it is not unusual to find mention in records of communitas populi or omnes de regno, where none are intended but the barons, or, at most, the tenants in chief. If we look attentively at the earliest instance of summoning knights of shires to parliament, that in 38 H. III., which has been noticed above, it will appear that they could only have been chosen by military tenants in chief. The object of calling this parliament, if parliament it were, was to obtain an aid from the military tenants, who, holding less than a knight's fee, were not required to do personal service. None then, surely but the tenants in chief could be electors upon this occasion, which merely respected their feudal duties. Again, to come much lower down, we find a series of petitions in the reigns of Edward III. and Richard II., which seem to lead us to a conclusion that only tenants in chief were represented by the knights of shires. The writ for wages directed the sheriff to levy them on the commons of the county, both within franchises and without (tam intra libertates quam extra). But the tenants of lords holding by baron endeavoured to exempt themselves from this burden, in which they seem to have been countenanced by the king. This led to frequent remonstrances from the commons, who finally procured a statute, that all lands, not discharged by prescription, should contribute to the payment of wages.* But, if these mesne tenants had possessed equal rights of voting with tenants in chief, it is impossible to conceive that they would have thought of claiming so unreasonable an exemption. Yet, as it would appear harsh to make any distinction between the rights of those who sustained an equal burden, we may perceive how the freeholders, holding of mesne lords might on that account obtain after the statute a participation in the privilege of tenants in chief. And without supposing any partiality or connivance, it is easy to comprehend, that while the nature of tenures and services was so obscure as to give rise to continual disputes, of which the ancient records of the King's Bench are full, no sheriff could be very accurate in rejecting the votes of common freeholders, repairing to the county-court, and undistinguishable, as must be allowed, from tenants in capite upon other occasions, such as serving on juries, or voting on the election of coroners. To all this it yields some corroboration, that a neighbouring though long hostile kingdom, who borrowed much of her law from our own, has never admitted any freeholders, except tenants in chief of the crown, to a suffrage in county elections. These attended the parliament of Scotland in person till 1428, when a law of James I. permitted them to send representatives.†

Such is, I think, a fair statement of the arguments that might be alleged by those who would restrain the right of election to tenants of the crown. It may be urged on the other side, that the genius of the feudal system was never completely displayed in England; much less can we make use of that policy to explain institutions that prevailed under Edward I. Instead of aids and scutages

* 12 Ric. II., c. 12. Prynne's 4th Register.

† Pinkerton's Hist. of Scotland, vol. i., p. 120 357. But this law was not regularly acted upon till 1587, p. 368.

levied upon the king's military tenants, the crown found ample resources in subsidies upon moveables, from which no class of men was exempted. But the statute that abolished all unparliamentary taxation led, at least in theoretical principle, to extend the elective franchise to as large a mass of the people as could conveniently exercise it. It was even in the mouth of our kings, that what concerned all should be approved by all. Nor is the language of all extant writs less adverse to the supposition, that the right of suffrage in county elections was limited to tenants in chief. It seems extraordinary, that such a restriction, if it existed, should never be deducible from these instruments; that their terms should invariably be large enough to comprise all freeholders. Yet no more is ever required of the sheriff than to return two knights, chosen by the body of the county. For they are not only said to be returned pro communitate, but "per communitatem," and "de assensu totius communitatis." Nor is it satisfactory to allege, without any proof, that this word should be restricted to the tenants in chief, contrary to what must appear to be its obvious meaning.* Certainly if these tenants of the crown had found inferior freeholds usurping a right of suffrage, we might expect to find it the subject of some legislative provision, or at least of some petition and complaint. And, on the other hand, it would have been considered as unreasonable to levy the wages due to knights of the shire for their service in parliament on those who had no share in their election. But it appears by writs at the very beginning of Edward II.'s reign, that wages were levied "de communitate comitatus."† It will scarcely be contended that no one was to contribute under this writ but tenants in chief; and yet the word communitas can hardly be applied to different persons, when it occurs in the same instrument and upon the same matter. The series of petitions above mentioned relative to the payment of wages rather tends to support a conclusion, that all mesne tenants had the right of suffrage, if they thought fit to exercise it, since it was earnestly contended that they were liable to contribute towards that expense. Nor does there appear any reason to doubt that all freeholders, except those within particular franchises, were suiters to the county-court; an institution of no feudal nature, and in which elections were to be made by those present. As to the meeting to which knights of shires were summoned in 38 H. III., it ought not to be reckoned a parliament, but rather one of those anomalous conventions which sometimes occurred in the unfixed state of government. It is at least the earliest known instance of representation, and leads us to no conclusion in respect to later times, when the commons had become an essential part of the legislature, and their consent was required to all public burdens.

This question, upon the whole, is certainly not free from considerable difficulty. The legal antiquaries are divided. Prynne does not seem to have doubted but that the knights were "elected in the full county, by and for the whole county," without respect to the tenure of the freeholders.* But Brady and Carte are of a different opinion.† Yet their disposition to narrow the basis of the constitution is so strong, that it creates a sort of prejudice against their authority. And if I might offer an opinion on so obscure a subject, I should be much inclined to believe, that even from the reign of Henry I., the election of knights by all freeholders in the county-court, without regard to tenure, was little, if at all, different from what it is at present.‡

Progress of towns.

The progress of towns in several continental countries from a condition bordering upon servitude to wealth and liberty has more than once attracted our attention in other parts of the present work. Their growth in England, both from general causes and imitative policy, was very similar and nearly coincident. Under the Anglo-Saxon line of sovereigns, we scarcely can dis-

* What can one who adopts this opinion of Dr. Brady say to the following record? Rex militibus, liberis hominibus, et *toti communitati* comitatus Wygorniæ tam intra libertates quam extra, salutem. Cum comites, barones, milites, liberi homines et communitates comitatuum regni nostri vicesimam omnium bonorum suorum mobilium, civesque et burgenses et communitates omnium civitatum et burgorum ejusdem regni, necnon tenentes de antiquis dominicis coronæ nostræ quintamdecimam bonorum suorum mobilium nobis concesserunt.—Pat. Rot., 1 E. II., in Rot. Parl., vol. i., p. 442. See also p. 241 and p. 269. If the word communitas is here used in any precise sense, which, when possible, we are to suppose in construing a legal instrument, it must designate, not the tenants in chief, but the inferior class, who, though neither freeholders nor free burgesses, were yet contributable to the subsidy on their goods.

† Madox, Firma Burgi, p. 99 and p. 102, note Z.

* Prynne's 2d Register, p. 50.

† Carte's Hist. of England, vol. ii., p. 250.

‡ The present question has been discussed with much ability in the Edinburgh Review, vol. xxvi. p. 341.

cover in our scanty records the condition of their inhabitants; except retrospectively from the great survey of Domesday Book, which displays the state of England under Edward the Confessor. Some attention to commerce had been shown by Alfred and Athelstan; and a merchant who had made three voyages beyond sea was raised by a law of the latter monarch to the dignity of a thane.* This privilege was not perhaps often claimed; but the burgesses of towns were already a distinct class from the ceorls or rustics, and, though hardly free according to our estimation, seem to have laid the foundation of more extensive immunities. It is probable, at least, that the English towns had made full as great advances towards emancipation as those of France. At the conquest, we find the burgesses or inhabitants of towns living under the superiority or protection of the king, or of some other lord to whom they paid annual rents, and determinate dues or customs. Sometimes they belonged to different lords; and sometimes the same burgesses paid customs to one master, while he was under the jurisdiction of another. They frequently enjoyed special privileges as to inheritance; and in two or three instances they seem to have possessed common property, belonging to a sort of guild or corporation; but never, as far as appears by any evidence, had they a municipal administration by magistrates of their own choice.† Besides the regular payments, which were in general not heavy, they were liable to tallages at the discretion of their lords. This burden continued for two centuries with no limitation, except that the barons were latterly forced to ask permission of the king before they set a tallage on their tenants, which was commonly done when he imposed one upon his own.* Still the towns became considerably richer; for the profits of their traffic were undiminished by competition; and the consciousness that they could not be individually despoiled of their possessions like the villeins of the country around, inspired an industry and perseverance which all the rapacity of Norman kings and barons was unable to daunt or overcome.

One of the earliest and most important changes in the condition of t[illegible]vns let in fee-farm. burgesses was the conversion of their individual tributes into a perpetual rent from the whole borough. The town was then said to be affermed, or let in fee-farm to the burgesses and their successors for ever.† Previously to such a grant, the lord held the town in his demesne, and was the legal proprietor of the soil and tenements; though I by no means apprehend that the burgesses were destitute of a certain estate in their pos

* Wilkins, p. 71.

† Burgenses Exoniæ urbis habent extra civitatem terram duodecim carucatarum: quæ nullam consuetudinem reddunt nisi ad ipsam civitatem.—Domesday, p. 100. At Canterbury the burgesses had forty-five houses without the city, de quibus ipsi habebant gablum et consuetudinem, rex autem socam et sacam; ipsi quoque burgenses habebant de rege triginta tres acras prati in gildam suam, p. 2. In Lincoln and Stamford some resident proprietors, called Lagemanni, had jurisdiction (socam et sacam) over their tenants. But nowhere have I been able to discover any trace of internal self-government; unless Chester may be deemed an exception, where we read of twelve judices civitatis; but by whom constituted does not appear. The word lageman seems equivalent to judex. The guild mentioned above at Canterbury was, in all probability, a voluntary association: so at Dover we find the burgesses' guildhall, gihalla burgensium, p. 1.

Many of the passages in Domesday relative to the state of burgesses are collected in Brady's History of Boroughs; a work which, if read with due suspicion of the author's honesty, will convey a great deal of knowledge.

Since the former part of this note was written, I have met with a charter granted by Henry II. to Lincoln, which seems to refer, more explicitly than any similar instrument, to municipal privileges of jurisdiction enjoyed by the citizens under Edward the Confessor. These charters, it is well known, do not always recite what is true; yet it is possible that the citizens of Lincoln, which had been one of the five Danish towns, sometimes mentioned with a sort of distinction by writers before the conquest, might be in a more advantageous situation than the generality of burgesses. Sciatis me concessisse civibus meis Lincoln, omnes libertates et consuetudines et leges suas, quas habuerunt tempore Edwardi et Will. et Henr. regum Angliæ, et gildam suam mercatoriam de hominibus civitatis et de aliis mercatoribus comitatus, sicut illam habuerunt tempore predictorum antecessorum nostrorum, regum Angliæ, melius et liberius. Et omnes homines qui infra quatuor divisas civitates manent et mercatum deducunt, sint ad gildas, et consuetudines et assisas civitatis, sicut melius fuerunt temp. Edw. et Will. et Henr. regum Angliæ.—Rymer, t. i., p. 40 (edit. 1816).

I am indebted to the friendly remarks of the periodical critic whom I have before mentioned, for reminding me of other charters of the same age, expressed in a similar manner, which in my haste I had overlooked, though printed in common books. But whether these general words ought to outweigh the silence of Domesday Book, I am not prepared to decide. I have admitted below, that the possession of corporate property implies an elective government for its administration, and I think it perfectly clear that the guilds made by-laws for the regulation of their members. Yet this is something different from municipal jurisdiction over all the inhabitants of a town.

* Madox, Hist. of Exchequer, c. 17.

† Madox, Firma Burgi, p. 1. There is one instance, I know not if any more could be found, of a firma burgi before the conquest. It was at Huntingdon.—Domesday, p. 203.

sessions But of a town in fee-farm he only kept the superiority, and the inheritance of the annual rent, which he might recover by distress.* The burgesses held their lands by burgage-tenure, nearly analogous to, or rather a species of, free soccage.† Perhaps before the grant they might correspond to modern copy-holders. It is of some importance to observe, that the lord, by such a grant of the town in fee-farm, whatever we may think of its previous condition, divested himself of his property, or lucrative dominion over the soil, in return for the perpetual rent; so that tallages subsequently set at his own discretion upon the inhabitants, however common, can hardly be considered as a just exercise of the rights of proprietorship.

Charters of incorporation.

Under such a system of arbitrary taxation, however, it was evident to the most selfish tyrant that the wealth of his burgesses was his wealth, and their prosperity his interest; much more were liberal and sagacious monarchs, like Henry II., inclined to encourage them by privileges. From the time of William Rufus, there was no reign in which charters were not granted to different towns, of exemption from tolls on rivers and at markets, those lighter manacles of feudal tyranny; or of commercial franchises; or of immunity from the ordinary jurisdictions; or, lastly, of internal self-regulation. Thus the original charter of Henry I. to the city of London‡ concedes to the citizens, in addition to valuable commercial and fiscal immunities, the right of choosing their own sheriff and justice, to the exclusion of every foreign jurisdiction.§ These grants, however, were not in general so extensive till the reign of John.‖

Before that time, the interior arrangement of towns had received a new organization. In the Saxon period we find voluntary associations, sometimes religious sometimes secular; in some cases for mutual defence against injury, in others for mutual relief in poverty. These were called guilds, from the Saxon verb *gildan*, to pay or contribute, and exhibited the natural, if not the legal character of corporations.* At the time of the conquest, as has been mentioned above, such voluntary incorporations of the burgesses possessed in some towns either landed property of their own, or rights of superiority over that of others. An internal elective government seems to have been required for the administration of a common revenue, and of other business incident to their association.† They be-

* Madox, p. 12, 13. † Id., p. 21.

‡ I have read somewhere that this charter was granted in 1101. But the instrument itself, which is only preserved by an Inspeximus of Edward IV., does not contain any date.—Rymer, t. i., p. 11 (edit. 1816). Could it be traced so high, the circumstance would be remarkable, as the earliest charters granted by Louis VI., supposed to be the father of these institutions, are several years later.

§ This did not, however, save the citizens from fining in one hundred marks to the king for this privilege.—Mag. Rot., 5 Steph., apud Madox, Hist. Exchequer, t. xi. I do not know that the charter of Henry I. can be suspected; but Brady, in his treatise of Boroughs (p. 38, edit. 1777), does not think proper once to mention it; and indeed uses many expressions incompatible with its existence.

‖ Blomefield, Hist. of Norfolk, vol. ii., p. 16, says that Henry I. granted the same privileges by charter to Norwich in 1122, which London possessed. Yet it appears that the king named the port-reeve or provost; but Blomefield suggests that he was probably recommended by the citizens, the office being annual.

* Madox, Firma Burgi, p. 23. Hicks has given us a bond of fellowship among the thanes of Cambridgeshire, containing several curious particulars. A composition of eight pounds, exclusive, I conceive, of the usual weregild, was to be enforced from the slayer of any fellow. If a fellow (gildæ) killed a man of 1200 shillings weregild, each of the society was to contribute half a marc; for a ceorl, two oræ (perhaps ten shillings); for a Welshman, one. If, however, this act was committed wantonly, the fellow had no right to call on the society for contribution. If one fellow killed another, he was to pay the legal weregild to his kindred, and also eight pounds to the society. Harsh words used by one fellow towards another, or even towards a stranger, incurred a fine. No one was to eat or drink in the company of one who had killed his brother fellow, unless in the presence of the king, bishop, or alderman.—Dissertatio Epistolaris, p. 21.

We find in Wilkins's Anglo-Saxon laws, p. 65, a number of ordinances, sworn to by persons both of noble and ignoble rank (ge eorlisce ge ceorlisce), and confirmed by King Athelstan. These are in the nature of by-laws for the regulation of certain societies that had been formed for the preservation of public order. Their remedy was rather violent: to kill and seize the effects of all who should rob any member of the association. This property, after deducting the value of the thing stolen, was to be divided into two parts; one given to the criminal's wife if not an accomplice, the other shared between the king and the society.

In another fraternity among the clergy and laity of Exeter, every fellow was entitled to a contribution in case of taking a journey, or if his house was burnt. Thus they resembled in some degree our friendly societies; and display an interesting picture of manners, which has induced me to insert this note, though not greatly to the present purpose. See more of the Anglo-Saxon guilds in Turner's History, vol. ii., p. 102. Societies of the same kind, for purposes of religion, charity, or mutual assistance, rather than trade, may be found afterward.—Blomefield's Hist. of Norfolk, vol. iii., p. 494.

† See a grant from Turstin, archbishop of York in the reign of Henry I., to the burgesses of Beverley, that they may have their *hanshus* (i. e. guild hall) like those of York, et ibi sua statuta pertractent ad honorem Dei, &c.—Rymer, t. i., p. 10, edit. 1816.

came more numerous, and more peculiarly commercial after that era, as well from the increase of trade as through imitation of similar fraternities existing in many towns of France. The spirit of monopoly gave strength to those institutions, each class of traders forming itself into a body, in order to exclude competition. Thus were established the companies in corporate towns, that of the Weavers in London being perhaps the earliest;* and these were successively consolidated and sanctioned by charters from the crown. In towns not large enough to admit of distinct companies, one merchant guild comprehended the traders in general, or the chief of them; and this, from the reign of Henry II. downward, became the subject of incorporating charters. The management of their internal concerns, previously to any incorporation, fell naturally enough into a sort of oligarchy, which the tenour of the charter generally preserved. Though the immunities might be very extensive, the powers were more or less restrained to a small number. Except in a few places, the right of choosing magistrates was first given by King John; and certainly must rather be ascribed to his poverty than to any enlarged policy, of which he was utterly incapable.†

Prosperity of English towns.

From the middle of the twelfth century to that of the thirteenth, the traders of England became more and more prosperous. The towns on the southern coast exported tin and other metals in exchange for the wines of France; those on the eastern sent corn to Norway; the Cinque-ports bartered wool against the stuffs of Flanders.‡ Though bearing no comparison with the cities of Italy or the empire, they increased sufficiently to acquire importance at home. That vigorous prerogative of the Norman monarchs, which kept down the feudal aristocracy, compensated for whatever inferiority there might be in the population and defensible strength of the English towns, compared with those on the continent. They had to fear no petty oppressors, no local hostility; and if they could satisfy the rapacity of the crown, were secure from all other grievances.

London.

London, far above the rest, our ancient and noble capital, might, even in those early times, be justly termed a member of the political system. This great city, so admirably situated, was rich and populous long before the conquest. Bede, at the beginning of the eighth century, speaks of London as a great market, which traders frequented by land and sea.* It paid £15,000 out of £82,000, raised by Canute upon the kingdom.† If we believe Roger Hoveden, the citizens of London, on the death of Ethelred II., joined with part of the nobility in raising Edmund Ironside to the throne.‡ Harold I., according to better authority, the Saxon Chronicle, and William of Malmsbury, was elected by their concurrence.◊ Descending to later history, we find them active in the civil war of Stephen and Matilda. The famous Bishop of Winchester tells the Londoners that they are almost accounted as noblemen on account of the greatness of their city; into the community of which it appears that some barons had been received.‖ Indeed the citizens themselves, or at least the principal of them, were called barons. It was certainly by far the greatest city in England. There have been different estimates of its population, some of which are extravagant; but I think it could hardly have contained less than thirty or forty thousand souls within its walls; and the suburbs were very populous.¶ These numbers, the enjoy-

* Madox, Firma Burgi, p. 189.

† Idem, passim. A few of an earlier date may be found in the new edition of Rymer.

‡ Lyttleton's Hist. of Henry II., vol. ii., p. 170. Macpherson's Annals of Commerce, vol. i., p. 331.

* Macpherson, p. 245. † Id., p. 292

‡ Cives Lundinenses, et pars nobilium, qui eo tempore consistebant Lundoniæ, Clitonem Eadmundum unanimi consensu in regem elevere, p. 249.

◊ Chron. Saxon., p. 154. Malmsbury, p. 76. He says the people of London were become almost barbarians through their intercourse with the Danes; propter frequentem convictum.

‖ Londinenses, qui sunt quasi optimates pro magnitudine civitatis in Anglia.—Malmsb., p. 189. Thus too Matthew Paris: cives Londinenses, quos propter civitatis dignitatem et civium antiquam libertatem Barones consueverunt appellare, p. 744; and in another place: totius civitatis cives, quos barones vocant, p. 835. Spelman says that the magistrates of several other towns were called barons.—Glossary, Barones de London.

¶ Drake, the historian of York, maintains that London was less populous about the time of the conquest than that city; and quotes Hardynge, a writer of Henry V.'s age, to prove that the interior part of the former was not closely built.—Eboracum, p. 91. York however does not appear to have contained more than 10,000 inhabitants at the accession of the Conqueror; and the very exaggerations as to the populousness of London prove that it must have far exceeded that number. Fitz-Stephen, the contemporary biographer of Thomas Becket, tells us of 80,000 men capable of bearing arms within its precincts; where however his translator, Pegge, suspects a mistake of the MS. in the numerals. And this, with similar hyperboles, so imposed on the judicious mind of Lord Lyttleton, that, finding in Peter of Blois the inhabitants of London reckoned at quadraginta millia he has actually proposed to read quadringenta millia

ment of privileges, and the consciousness of strength, infused a free and even mutinous spirit into their conduct.* The Londoners were always on the barons' side in their contests with the crown. They bore a part in deposing William Longchamp, the chancellor and justiciary of Richard I.† They were distinguished in the great struggle for Magna Charta; the privileges of their city are expressly confirmed in it; and the Mayor of London was one of the twenty-five barons to whom the maintenance of its provisions was delegated. In the subsequent reign, the citizens of London were regarded with much dislike and jealousy by the court, and sometimes suffered pretty severely by its hands, especially after the battle of Evesham.‡

Notwithstanding the influence of London in these seasons of disturbance, we do not perceive that it was distinguished from the most insignificant town by greater participation in national councils. Rich, powerful, honourable, and high-spirited as its citizens had become, it was very long before they found a regular place in parliament. The prerogative of imposing tallages at pleasure, unsparingly exercised by Henry III. even over London,§ left the crown no inducement to summon the inhabitants of cities and boroughs. As these indeed were daily growing more considerable, they were certain, in a monarchy so limited as that of England became in the thirteenth century, of attaining sooner or later this eminent privilege. Although, therefore, the object of Simon de Montfort in calling them to his parliament after the battle of Lewes was merely to strengthen his own faction, which prevailed among the commonalty, yet their permanent admission into the legislature may be ascribed to a more general cause. For otherwise it is not easy to see why the innovation of a usurper should have been drawn into precedent, though it might perhaps accelerate what the course of affairs was gradually preparing.

First summoning of towns to parliament, in 49 H. III.

It is well known that the earliest writs of summons to cities and boroughs of which we can prove the existence, are those of Simon de Montfort, earl of Leicester, bearing date the 12th of December, 1264, in the forty-ninth year of Henry III.* After a long controversy, almost all judicious inquirers seem to have acquiesced in admitting this origin of popular representation.† The argument may be very concisely stated. We find from innumerable records that the king imposed tallages upon his demesne towns at discretion.‡ No public instrument previous

genta.—Hist. Henry II., vol. iv., ad finem. It is hardly necessary to observe, that the condition of agriculture and internal communication would not have allowed half that number to subsist.

The subsidy-roll of 1377, published in the Archæologia, vol. vii., would lead to a conclusion that all the inhabitants of London did not even then exceed 35,000. If this be true, they could not have amounted probably to so great a number two or three centuries earlier.

* This seditious, or at least refractory character of the Londoners, was displayed in the tumult headed by William Longbeard in the time of Richard I., and that under Constantine in 1222, the patriarchs of a long line of city demagogues.—Hoveden, p. 765. M. Paris, p. 154.

† Hoveden's expressions are very precise, and show that the share taken by the citizens of London (probably the mayor and aldermen) in this measure was no tumultuary acclamation, but a deliberate concurrence with the nobility. Comes Johannes, et fere omnes episcopi, et comites Angliæ eâdem die intraverunt Londonias; et in crastino prædictus Johannes fratet regis, et archiepiscopus Rothomagensis, et omnes episcopi, et comites, et barones, et cives Londonienses cum illis convenerunt in atrio ecclesiæ S. Pauli. . . . Placuit ergo Johanni fratri regis, et omnibus episcopis, et comitibus, et baronibus regni, et civibus Londoniarum, quod cancellarius ille deponeretur, et deposuerunt eum, &c., p. 701.

‡ The reader may consult, for a more full account of the English towns before the middle of the thirteenth century Lyttleton's History of Henry II., vol. ii., p 174; and Macpherson's Annals of Commerce.

§ Frequent proofs of this may be found in Madox, Hist. of Exchequer c. 17, as well as in Matt. Paris, who laments it with indignation. Cives Londinenses, contra consuetudinem et libertatem civitatis, quasi servi ultimæ conditionis, non sub nomine aut titulo liberi adjutorii, sed tallagii, quod multum eos angebat, regi, licet inviti et renitentes, numerare sunt coacti, p. 492. Heu ubi est Londinensis, toties empta, toties concessa, toties scripta, toties jurata libertas! &c. p. 657. The king sometimes suspended their market, that is, I suppose, their right of toll, till his demands were paid.

* These writs are not extant, having perhaps never been returned; and consequently we cannot tell to what particular places they were addressed. It appears, however, that the assembly was intended to be numerous, for the entry runs: scribitur civibus Ebor, civibus Lincoln, et cæteris burgis Angliæ. It is singular that no mention is made of London, which must have had some special summons.—Rymer, t. i., p. 803. Dugdale, Summoniones ad Parliamentum, p. 1.

† It would ill repay any reader's diligence to wade through the vapid and diluted pages of Tyrrell; but whoever would know what can be best pleaded for a higher antiquity of our present parliamentary constitution, may have recourse to Hody on Convocations, and Lord Lyttleton's History of Henry II., vol. ii., p. 276, and vol. iv., p. 79—106. I do not conceive it possible to argue the question more ingeniously than has been done by the noble writer last quoted. Whitelocke, in his commentary on the parliamentary writ, has treated it very much at length, but with no critical discrimination.

‡ Madox, Hist. of Exchequer, c. 1?

to the forty-ninth of Henry III. names the citizens and burgesses as constituent parts of parliament; though prelates, barons, knights, and sometimes freeholders, are enumerated;* while, since the undoubted admission of the commons, they are almost invariably mentioned. No historian speaks of representatives appearing for the people, or uses the word citizen or burgess in describing those present in parliament. Such convincing, though negative evidence is not to be invalidated by some general and ambiguous phrases, whether in writs and records or in historians.† Those monkish annalists are poor authorities upon any point where their language is to be delicately measured. But it is hardly possible, that writing circumstantially, as Roger de Hoveden and Matthew Paris sometimes did, concerning proceedings in parliament, they could have failed to mention the commons in unequivocal expressions, if any representatives from that order had actually formed a part of the assembly.

Authorities in favour of an earlier date.

Two authorities, however, which had been supposed to prove a greater antiquity than we have assigned to the representation of the commons, are deserving of particular consideration; the cases of St Albans and Barnstaple. The burgesses of St. Albans complained to the council, in the eighth year of Edward II., that, although they held of the king in capite, and ought to attend his parliaments whenever they are summoned, by two of their number, instead of all other services, as had been their custom in all past times, which services the said burgesses and their predecessors had performed as well in the time of the late King Edward and his ancestors, as in that of the present king until the parliament now sitting, the names of their deputies having been constantly enrolled in chancery, yet the sheriff of Hertfordshire, at the instigation of the abbot of St. Albans had neglected to cause an election and return to be made; and prayed remedy To this petition it was answered, "Let the rolls of chancery be examined, that it may appear whether the said burgesses were accustomed to come to parliament or not, in the time of the king's ancestors: and let right be done to them, vocatis evocandis, si necesse fuerit." I do not translate these words, concerning the sense of which there has been some dispute, though not apparently very material to the principal subject.*

St. Albans.

This is, in my opinion, by far the most plausible testimony for the early representation of boroughs. The burgesses of St. Albans claim a prescriptive right from the usage of all past times, and more especially those of the late Edward and his ancestors. Could this be alleged, it has been said, of a privilege at the utmost of fifty years' standing, once granted by a usurper, in the days of the late king's father, and afterward discontinued till about twenty years before the date of their petition, according to those who refer the regular appearance of the commons in parliament to the twenty-third of Edward I.? Brady, who obviously felt the strength of this authority, has shown little of his usual ardour and acuteness in repelling it. It was observed, however, by Madox, that the petition of St. Albans contains two very singular allegations: it asserts that the town was part of the king's demesne, whereas it had invariably belonged to the adjoining abbey; and that its burgesses held by the tenure of attending parliament, instead of all other services, contrary to all analogy, and without parallel in the condition of any tenant in capite throughout the kingdom. "It is no wonder, therefore," says Hume, "that a petition which advances two falsehoods should contain one historical mistake, which indeed amounts only to an inaccurate expression" But it must be confessed, that we cannot so easily set aside the whole authority of this record. For whatever assurance the people of St. Albans might show in asserting what was untrue, the king's council must have been aware how recently the deputies of any towns had been admitted into parliament. If the lawful birth of the House of Commons were in 1295, as is maintained by Brady and his disciples, is it conceivable that, in 1315, the council would have received a petition, claiming the elective franchise by prescription

* The only apparent exception to this is in the letter addressed to the pope by the parliament of 1246, the salutation of which runs thus: Barones, proceres, et magnates, *ac nobiles portuum maris habitatores*, necnon et clerus et populus universus, salutem.—Matt. Paris. p. 696. It is plain, I think, from these words, that some of the chief inhabitants of the Cinque-ports, at that time very flourishing towns, were present in this parliament. But whether they sat as representatives, or by a peculiar writ of summons is not so evident; and the latter may be the more probable hypothesis of the two.

† Thus Matthew Paris tells us, that in 1247, the whole kingdom, regni totius universitas, repaired to parliament of Henry III., p. 367.

* Brady's Introd. to Hist. of England. p. 38

and have referred to the rolls of chancery to inquire whether this had been used in the days of the king's progenitors? I confess that I see no answer which can easily be given to this objection by such as adopt the *latest* epoch of borough representation, namely, the parliament of 23 E. I. But they are by no means equally conclusive against the supposition, that the communities of cities and towns, having been first introduced into the legislature during Leicester's usurpation, in the forty-ninth year of Henry III., were summoned, not perhaps uniformly, but without any long intermission, to succeeding parliaments. There is a strong presumption, from the language of a contemporary historian, that they sat in the parliament of 1269, four years after that convened by Leicester.* It is more unequivocally stated by another annalist, that they were present in the first parliament of Edward I., held in 1271.† Nor does a similar inference want some degree of support from the preambles of the statute of Marlebridge in 51 H. III., of Westminster I., in the third, and of Glocester, in the sixth year of Edward I.‡ And the writs are extant which summon every city, borough, and market town to send two deputies to a council in the eleventh year of his reign. I call this a council, for it undoubtedly was not a parliament. The sheriffs were directed to summon personally all who held more than twenty pounds a year of the crown, as well as four knights for each county invested with full powers to act for the commons thereof. The knights and burgesses thus chosen, as well as the clergy within the province of Canterbury, met at Northampton; those within the province of York, at that city. And neither assembly was opened by the king.* This anomalous convention was nevertheless one means of establishing the representative system, and, to an inquirer free from technical prejudice, is little less important than a regular parliament. Nor have we long to look even for this. In the same year, about eight months after the councils at Northampton and York, writs were issued summoning to a parliament at Shrewsbury two citizens from London, and as many from each of twenty other considerable towns.† It is a slight cavil to object that these were not directed as usual to the sheriff of each county, but to the magistrates of each place. Though a very imperfect, this was a regular and unequivocal representation of the commons in parliament. But their attendance seems to have intermitted from this time to the twenty-third year of Edward's reign.

Those to whom the petition of St. Albans is not satisfactory, will hardly yield their conviction to that of Barnstaple. This town set forth in the eighteenth of Edward III., that, among other franchises granted to them by a charter of Athelstan, they had ever since exercised the right of sending two burgesses to parliament. The said charter indeed was unfortunately mislaid, and the prayer of their petition was to obtain one of the like import in its stead. Barnstaple, it must be observed, was a town belonging to Lord Audley, and had actually returned members ever since the twenty-third of Edward I. Upon an inquisition directed by the king to be made into the truth of these allegations, it was found that "the burgesses of the said town were wont to send two burgesses to parliament for the commonal- Barnstaple

* Convocatis universis Angliæ prelatis et magnatibus, necnon cunctarum regni sui civitatum et burgorum potentioribus.—Wikes, in Gale, xv. Scriptores, t. ii., p. 88. I am indebted to Hody on Convocations for this reference, which seems to have escaped most of our constitutional writers.

† Hoc anno . . . . convenerunt archiepiscopi, episcopi, comites et barones, abbates et priores, et de quolibet comitatu quatuor milites, et de quâlibet civitate quatuor.—Annales Waverleienses in Gale, t. ii., p. 227. I was led to this passage by Atterbury. Rights of Convocations, p. 310, where some other authorities, less unquestionable, are adduced for the same purpose. Both this assembly, and that mentioned by Wikes in 1269, were certainly parliaments, and acted as such, particularly the former, though summoned for purposes not strictly parliamentary.

‡ The statute of Marlebridge is said to be made convocatis discretioribus, tam majoribus quàm minoribus; that of Westminster primer, par son conseil, et par l'essentements des archievesques, evesques, abbes, priors, countes, barons, et toute le comminalty de la terre illonques summones. The statute of Glocester runs, appelles les plus discretes de son royaume, auxibien des grandes comedes meinders. These preambles seem to have satisfied Mr. Prynne that the commons were then represented, though the writs are wanting; and certainly no one could be less disposed to exaggerate their antiquity.—2d Register, p. 30.

* Brady's Hist. of England, vol. ii., Appendix Carte, vol. ii., p. 257.

† This is commonly denominated the parliament of Acton Burnell; the clergy and commons having sat in that town, while the barons passed judgment upon David, prince of Wales, at Shrewsbury. The towns which were honoured with the privilege of representation, and may consequently be supposed to have been at that time the most considerable in England, were York, Carlisle, Scarborough, Nottingham, Grimsby, Lincoln, Northampton, Lynn, Yarmouth, Colchester, Norwich, Chester, Shrewsbury, Worcester, Hereford, Bristol, Canterbury, Winchester, and Exeter.—Rymer, t. ii., p. 247.

ty of the borough;" but nothing appeared as to the pretended charter of Athelstan, or the liberties which it was alleged to contain. The burgesses, dissatisfied with this inquest, prevailed that another should be taken, which certainly answered better their wishes. The second jury found that Barnstaple was a free borough from time immemorial; that the burgesses had enjoyed under a charter of Athelstan, which had been casually lost, certain franchises by them enumerated, and particularly that they should send two burgesses to parliament; and that it would not be to the king's prejudice, if he should grant them a fresh charter in terms equally ample with that of his predecessor Athelstan. But the following year we have another writ and another inquest, the former reciting that the second return had been unduly and fraudulently made; and the latter expressly contradicting the previous inquest in many points, and especially finding no proof of Athelstan's supposed charter. Comparing the various parts of this business, we shall probably be induced to agree with Willis, that it was but an attempt of the inhabitants of Barnstaple to withdraw themselves from the jurisdiction of their lord. For the right of returning burgesses, though it is the main point of our inquiries, was by no means the most prominent part of their petition, which rather went to establish some civil privileges of devising their tenements and electing their own mayor. The first and fairest return finds only that they were accustomed to send members to parliament, which a usage of fifty years (from 23 E. I. to 18 E. III.) was fully sufficient to establish, without searching into more remote antiquity.*

It has, however, probably occurred to the reader of these two cases, St. Albans and Barnstaple, that the representation of the commons in parliament was not treated as a novelty, even in times little posterior to those in which we have been supposing it to have originated. In this consists, I think, the sole strength of the opposite argument. An act in the fifth year of Richard II. declares, that if any sheriff shall leave out of his returns any cities or boroughs which be bound, and of old time were wont to come to the parliament, he shall be punished as was accustomed to be done in the like case in time past.† In the memorable assertion of legislative right by the commons in the second of Henry V., which will be quoted hereafter, they affirm that "the commune of the land is, *and ever has been*, a member of parliament."* And the consenting suffrage of our older law-books must be placed in the same scale. The first gainsayers, I think, were Camden and Sir Henry Spelman, who, upon probing the antiquities of our constitution somewhat more exactly than their predecessors, declared that they could find no signs of the commons in parliament till the forty-ninth of Henry III. Prynne, some years afterward, with much vigour and learning, maintained the same argument, and Brady completed the victory. But the current doctrine of Westminster Hall, and still more of the two chambers of parliament, was certainly much against these antiquaries; and it passed at one time for a surrender of popular principles, and almost a breach of privilege, to dispute the lineal descent of the house of commons from the witenagemot.†

The true ground of these pretensions to antiquity was a very well founded persuasion, that no other argument would be so conclusive to ordinary minds, or cut short so effectually all encroachments of the prerogative. The populace of every country, but none so much as the English, easily grasp the notion of right, meaning thereby something positive and definite; while the maxims of expediency or theoretical reasoning pass slightly

* Willis, Notitia Parliamentaria, vol. ii., p. 312. Lyttleton's Hist. of Hen. II., vol. iv. p. 89.

† 5 Ric. II., stat. 2, c. iv.

* Rot. Parl., vol. iv., p. 22.

† Though such an argument would not be conclusive, it might afford some ground for hesitation if the royal burghs of Scotland were actually represented in their parliament more than half a century before the date assigned to the first representation of English towns. Lord Hailes concludes from a passage in Fordun, "that, as early as 1211, burgesses gave suit and presence in the great council of the king's vassals; though the contrary has been asserted with much confidence by various authors."—Annals of Scotland, vol. i., p. 139. Fordun's words, however, so far from importing that they formed a member of the legislature, which perhaps Lord Hailes did not mean by the quaint expression "gave suit and presence," do not appear to me conclusive to prove that they were actually present. Hoc anno Rex Scotiæ Willelmus magnum tenuit consilium. Ubi, petito ab optimatibus auxilio, promiserunt se daturos decem mille marcas; præter burgenses regni, qui sex millia promiserunt. Those who know the brief and incorrect style of chronicles will not think it unlikely that the offer of 6000 marks by the burgesses was not made in parliament, but in consequence of separate requisitions from the crown. Pinkerton is of opinion, that the magistrates of royal burghs might upon this, and perhaps other occasions, have attended at the bar of parliament with their offers of money. But the deputies of towns do not appear as a part of parliament till 1326.—Hist. of Scotland, vol. i., p. 352, 371.

over their minds. Happy indeed for England that it is so! But we have here to do with the fact alone. And it may be observed, that several pious frauds were practised, to exalt the antiquity of our constitutional liberties. These began, perhaps, very early, when the imaginary laws of Edward the Confessor were so earnestly demanded. They were carried farther under Edward I. and his successors, when the fable of privileges granted by the Conqueror to the men of Kent was devised; when Andrew Horn filled his Mirror of Justices with fictitious tales of Alfred; and, above all, when the "method of holding parliaments in the time of Ethelred" was fabricated, about the end of Richard II.'s reign; an imposture which was not too gross to deceive Sir Edward Coke.

Causes of summoning deputies from boroughs.

There is no great difficulty in answering the question, why the deputies of boroughs were finally and permanently ingrafted upon parliament by Edward I.* The government was becoming constantly more attentive to the wealth that commerce brought into the kingdom, and the towns were becoming more flourishing and more independent. But, chiefly, there was a much stronger spirit of general liberty, and a greater discontent at violent acts of prerogative, from the era of Magna Charta; after which authentic recognition of free principles, many acts, which had seemed before but the regular exercise of authority, were looked upon as infringements of the subject's right. Among these the custom of setting tallages at discretion would naturally appear the most intolerable; and men were unwilling to remember that the burgesses who paid them were indebted for the rest of their possessions to the bounty of the crown. In Edward I.'s reign, even before the great act of confirmation of the charters had rendered arbitrary impositions absolutely unconstitutional, they might perhaps excite louder murmurs than a discreet administration would risk. Though the necessities of the king therefore, and his imperious temper, often led him to this course,* it was a more prudent counsel to try the willingness of his people before he forced their reluctance. And the success of his innovation rendered it worth repetition. Whether it were from the complacency of the commons at being thus admitted among the peers of the realm, or from a persuasion that the king would take their money if they refused it, or from inability to withstand the plausible reasons of his ministers, or from the private influence to which the leaders of every popular assembly have been accessible, much more was granted in subsidies after the representation of the towns commenced, than had ever been extorted in tallages.

To grant money was therefore the main object of their meeting; and if the exigencies of the administration could have been relieved without subsidies, the citizens and burgesses might still have sat at home, and obeyed the laws which a council of prelates and barons enacted for their government. But it is a difficult question, whether the king and the peers designed to make room for them, as it were, in legislation; and whether the power of the purse drew after it immediately, or only by degrees, those indispensable rights of consenting to laws which they now possess. There are no sufficient means of solving this doubt during the reign of Edward I. The writ in 22 E. I. directs two knights to be chosen cum plenâ potestate pro se et totâ communitate comitatûs prædicti, ad consulendum et consentiendum pro se et communitate illâ, his quæ comites, barones, et proceres prædicti concorditer ordinaverint in præmissis. That of the next year runs, ad faciendum tunc quod de communi consilio ordinabitur in præmissis. The same words are inserted in the writ of 26 E. I. In that of 28 E. I. the knights are directed to be sent cum plenâ potestate audiendi et faciendi quæ ibidem ordinari contigerint pro communi commodo. Several others of the same reign have the words ad faciendum. The difficulty is to pronounce whether this term is to be interpreted in the sense of *performing* or of *enacting*; whether the representatives of

* These expressions cannot appear too strong. But it is very remarkable, that to the parliament of 18 Edward III., the writs appear to have summoned none of the towns, but only the counties.—Willis, Notit. Parliament., vol. i., Preface, p. 13. Prynne's Register, 3d part, p. 144. Yet the citizens and burgesses are once, but only once, named as present in the parliamentary roll; and there is, in general, a chasm in place of their names, where the different ranks present are enumerated.—Rot. Parl., vol. ii., p. 146. A subsidy was granted at this parliament; so that, if the citizens and burgesses were really not summoned, it is by far the most violent stretch of power during the reign of Edward III. But I know of no collateral evidence to illustrate or disprove it.

* Tallages were imposed without consent of parliament in 17 E. I., Wykes, p. 117; and in 34 E. I., Brady's Hist. of Eng., vol. ii. In the latter instance the king also gave leave to the lay and spiritual nobility to set a tallage on their own tenants. This was subsequent to the Confirmati Chartarum, and unquestionably illegal.

the commons were merely to learn from the lords what was to be done, or to bear their part in advising upon it. The earliest writ, that of 22 E. I., certainly implies the latter; and I do not know that any of the rest are conclusive to the contrary. In the reign of Edward II., the words ad consentiendum alone, or ad faciendum et consentiendum, begin; and from that of Edward III. this form has been constantly used.* It must still however be highly questionable, whether the commons, who had so recently taken their place in parliament, gave any thing more than a constructive assent to the laws enacted during this reign. They are not even named in the preamble of any statute till the last year of Edward I. Upon more than one occasion, the sheriffs were directed to return the same members who had sat in the last parliament, unless prevented by death or infirmity.†

At what time parliament was divided into two houses.

It has been a very prevailing opinion, that parliament was not divided into two houses at the first admission of the commons. If by this is only meant that the commons did not occupy a separate chamber till some time in the reign of Edward III., the proposition, true or false, will be of little importance. They may have sat at the bottom of Westminster Hall, while the lords occupied the upper end. But that they were ever intermingled in voting appears inconsistent with likelihood and authority. The usual object of calling a parliament was to impose taxes; and these, for many years after the introduction of the commons, were laid in different proportions upon the three estates of the realm. Thus in the 23 E. I., the earls, barons, and knights gave the king an eleventh, the clergy a tenth; while he obtained a seventh from the citizens and burgesses; in the twenty-fourth of the same king, the two former of these orders gave a twelfth, the last an eighth; in the thirty-third year, a thirtieth was the grant of the barons and knights, and of the clergy, a twentieth of the cities and towns: in the first of Edward II., the counties paid a twentieth, the towns a fifteenth; in the sixth of Edward III., the rates were a fifteenth and a tenth.* These distinct grants imply distinct grantors; for it is not to be imagined that the commons intermeddled in those affecting the lords, or the lords in those of the commons. In fact, however, there is abundant proof of their separate existence long before the seventeenth of Edward III., which is the epoch assigned by Carte,† or even the sixth of that king, which has been chosen by some other writers. Thus the commons sat at Acton Burnell in the eleventh of Edward I., while the upper house was at Shrewsbury. In the eighth of Edward II., "the commons of England complain to the king and his council," &c.‡ These must surely have been the commons assembled in parliament, for who else could thus have entitled themselves? In the nineteenth of the same king, we find several petitions, evidently proceeding from the body of the commons in parliament, and complaining of public grievances.§ The roll of 1 E. III., though mutilated, is conclusive to show that separate petitions were then presented by the commons, according to the regular usage of subsequent times.‖ And, indeed, the preamble of 1 E. III., stat. 2, is apparently capable of no other inference.

As the knights of shires correspond to the lower nobility of other feudal countries, we have less cause to be surprised that they belonged originally to the same branch of parliament as the barons, than at their subsequent intermixture with men so inferior in station as the citizens and burgesses. It is by no means easy to define the point of time when this distribution was settled; but I think it may be inferred from the rolls of parliament, that the houses were divided, as they are at present, in the eighth, ninth, and nineteenth years of Edward II.¶ This appears, however, beyond doubt, in the first of Edward III.** Yet in the sixth of the same prince, though the knights and burgesses are expressly mentioned to have consulted together, the former taxed themselves in a smaller rate of subsidy than the latter.††

The proper business of the house of commons was to petition for redress of grievances, as much as to provide for the necessities of the crown. In the

* Prynne's 2d Register. It may be remarked, that writs of summons to great councils never ran ad faciendum, but ad tractandum, consulendum et consentiendum; from which some would infer that faciendum had the sense of enacting; since statutes could not be passed in such assemblies.—Id., p. 92.

† 28 E. I., in Prynne's 4th Register, p. 12; 9 E. II. (a great council), p. 48.

* Brady's Hist. of England, vol. ii., p. 40. Parliamentary History, vol. i., p. 206. Rot. Parliament, t. ii., p. 66.

† Carte, vol. ii., p. 451. Parliamentary History vol. i., p. 234.

‡ Rot. Parl., v. i., p. 289. § Id., p 430.

‖ Id., vol. ii., p. 7. ¶ Id., p. 289. 351 430

** Id., p. 5. †† Id., p. 96.

prudent fiction of English law, no wrong is supposed to proceed from the source of right. The throne is fixed upon a pinnacle, which perpetual beams of truth and justice irradiate, though corruption and partiality may occupy the middle region, and cast their chill shade upon all below. In his high court of parliament, a king of England was to learn where injustice had been unpunished, and where right had been delayed. The common courts of law, if they were sufficiently honest, were not sufficiently strong to redress the subject's injuries, where the officers of the crown or the nobles interfered. To parliament he looked as the great remedial court for relief of private as well as public grievances. For this cause it was ordained in the fifth of Edward II., that the king should hold a parliament once, or, if necessary, twice every year; "that the pleas which have been thus delayed, and those where the justices have differed, may be brought to a close."* And a short act of 4 Edward III., which was not very strictly regarded, provides that a parliament shall be held "every year, or oftener, if need be."† By what persons, and under what limitations, this jurisdiction in parliament was exercised, will come under our future consideration.

The efficacy of a king's personal character, in so imperfect a state of government, was never more strongly exemplified than in the two first Edwards. The father, a little before his death, had humbled his boldest opponents among the nobility; and as for the commons, so far from claiming a right of remonstrating, we have seen cause to doubt whether they were accounted effectual members of the legislature for any purposes but taxation. But in the very second year of the son's reign, they granted the twenty-fifth penny of their goods, "upon this condition, that the king should take advice and grant redress upon certain articles wherein they are aggrieved." These were answered at the ensuing parliament, and are entered, with the king's respective promises of redress, upon the roll. It will be worth while to extract part of this record, that we may see what were the complaints of the commons of England, and their notions of right, in 1309. I have chosen, on this as on other occasions, to translate very literally, at the expense of some stiffness, and perhaps obscurity in language.

Edward II. Petitions of parliament during his reign.

"The good people of the kingdom who are come hither to parliament, pray our lord the king that he will, if it please him, have regard to his poor subjects, who are much aggrieved by reason that they are not governed as they should be; especially as to the articles of the Great Charter; and for this, if it please him, they pray remedy. Besides which they pray their lord the king to hear what has long aggrieved his people, and still does so from day to day, on the part of those who call themselves his officers, and to amend it, if he pleases." The articles, eleven in number, are to the following purport:—1. That the king's purveyors seize great quantities of victuals without payment; 2. That new customs are set on wine, cloth, and other imports; 3. That the current coin is not so good as formerly;* 4, 5. That the steward and marshal enlarge their jurisdiction beyond measure to the oppression of the people 6. That the commons find none to receive petitions addressed to the council; 7. That the collectors of the king's dues (pernours des prises) in towns and at fairs take more than is lawful; 8. That men are delayed in their civil suits by writs of protection; 9. That felons escape punishment by procuring charters of pardon; 10. That the constables of the king's castles take cognizance of common pleas; 11. That the king's escheators oust men of lands held by good title under pretence of an inquest of office.†

These articles display in a short compass the nature of those grievances which existed under almost all the princes of the Plantagenet dynasty, and are spread over the rolls of parliament for more than a century after this time. Edward gave the amplest assurances of putting an end to them all; except in one instance, the augmented customs on imports, to which he answered rather evasively, that he would take them off till he should perceive whether himself and his people derived advantage from so doing, and act thereupon as he should

* Rot. Parl., vol. i., p. 285.

† 4 E. III., c. 14. Annual sessions of parliament seem fully to satisfy the words, and still more the spirit of this act, and of 36 E. III., c. 10; which, however, are repealed by implication from the provisions of 6 W. III., c. 2. But it was very rare under the Plantagenet dynasty for a parliament to continue more than a year

* This article is so expressed as to make it appear that the grievance was the high price of commodities. But as this was the natural effect of a degraded currency, and the whole tenour of these articles relates to abuses of government, I think it must have meant what I have said in the text

† Prynne's 2d Register, p. 68.

be advised Accordingly, the next year, he issued writs to collect these new customs again. But the Lords Ordainers superseded the writs, having entirely abrogated all illegal impositions.* It does not appear, however, that, regard had to the times, there was any thing very tyrannical in Edward's government. He set tallages sometimes, like his father, on his demesne towns without assent of parliament.† In the nineteenth year of his reign, the commons show, that "whereas we and our ancestors have given many tallages to the king's ancestors to obtain the charter of the forest, which charter we have had confirmed by the present king, paying him largely on our part; yet the king's officers of the forest seize on lands, and destroy ditches, and oppress the people, for which they pray remedy, for the sake of God and his father's soul." They complain at the same time of arbitrary imprisonment, against the law of the land.‡ To both these petitions the king returned a promise of redress; and they complete the catalogue of customary grievances in this period of our constitution.

During the reign of Edward II. the rolls of parliament are imperfect, and we have not much assistance from other sources. The assent of the commons, which frequently is not specified in the statutes of this age, appears in two remarkable and revolutionary proceedings, the appointment of the Lords Ordainers in 1312,§ and that of Prince Edward as guardian of the realm in the rebellion which ended in the king's dethronement. In the former case, it indicates that the aristocratic party then combined against the crown were desirous of conciliating popularity. An historian relates, that some of the commons were consulted upon the ordinances to be made for the reformation of government.‖ In the latter case, the deposition of Edward II., I am satisfied, that the commons assent was pretended in order to give more speciousness to the transaction.¶ But as this proceeding, however violent, bears evident marks of having been conducted by persons conversant in law, the mention of the commons may be deemed a testimony to their constitutional right of participation with the peers in making provision for a temporary defect of whatever nature in the executive government.

During the long and prosperous reign of Edward III., the efforts of parliament in behalf of their country were rewarded with success, in establishing upon a firm footing three essential principles of our government; the illegality of raising money without consent; the necessity that the two houses should concur for any alterations in the law; and, lastly, the right of the commons to inquire into public abuses, and to impeach public counsellors. By exhibiting proofs of each of these from parliamentary records, I shall be able to substantiate the progressive improvement of our free constitution, which was principally consolidated during the reigns of Edward III. and his two next successors. Brady indeed, Carte, and the authors of the Parliamentary History, have trod already over this ground; but none of the three can be considered as familiar to the generality of readers, and I may at least take credit for a sincerer love of liberty than any of their writings display.

Edward III. The commons establish several rights.

In the sixth year of Edward III. a parliament was called to provide for the emergency of an Irish rebellion; wherein, "because the king could not send troops and money to Ireland without the aid of his people, the prelates, earls, barons, and other great men, and the knights of shires, and all the commons,

Remonstrances against levying money without consent.

* Prynne's 2d Register, p. 75.

† Madox, Firma Burgi, p. 6. Rot. Parl., vol. i., p. 449.

‡ Rot. Parl., vol. i., p. 430. § Id., p. 281.

‖ Walsingham, p. 97.

¶ A record, which may be read in Brady's History of England, vol. ii., Append., p. 66, and in Rymer, t. iv., p. 1237, relative to the proceedings on Edward II.'s flight into Wales and subsequent detention, recites "that the king, having left his kingdom without government, and gone away with notorious enemies of the queen, prince, and realm; divers prelates, earls, barons, and knights then being at Bristol, in the presence of the said queen and duke (Prince Edward, duke of Cornwall), *by the assent of the whole commonalty of the realm there being*, unanimously elected the said duke to be guardian of the said kingdom; so that the said duke and guardian should rule and govern the said realm, in the name and by the authority of the king his father, he being thus absent." But the king being taken and brought back into England, the power thus delegated to the guardian ceased of course; whereupon the Bishop of Hereford was sent to press the king to permit that the great seal, which he had with him, the prince having only used his private seal, should be used in all things that required it. Accordingly the king sent the great seal to the queen and prince. The bishop is said to have been thus commissioned to fetch the seal by the prince and queen, and by the said prelates and peers, *with the assent of the said commonalty then being at Hereford.* It is plain that these were mere words of course; for no parliament had been convoked, and no proper representatives could have been either at Bristol or Hereford. However, this is a very curious record, inasmuch as it proves the importance attached to the forms of the constitution at this period

of their free-will, for the said purpose, and also in order that the king might live of his own, and not vex his people by excessive prises, nor in other manner, grant to him the fifteenth penny, to levy of the commons,* and the tenth from the cities, towns, and royal demesnes. And the king, at the request of the same, in ease of his people, grants that the commissions lately made to certain persons assigned to set tallages on cities, towns, and demesnes throughout England, shall be immediately repealed; and that in time to come he will not set such tallage, except as it has been done in the time of his ancestors, and as he may reasonably do."†

These concluding words are of dangerous implication, and certainly it was not the intention of Edward, inferior to none of his predecessors in the love of power, to divest himself of that eminent prerogative, which, however illegally since the Confirmatio Chartarum, had been exercised by them all. But the parliament took no notice of this reservation, and continued with unshaken perseverance to insist on this incontestable and fundamental right, which he was prone enough to violate.

In the thirteenth year of this reign, the lords gave their answer to commissioners sent to open the parliament, and to treat with them on the king's part, in a sealed roll. This contained a grant of the tenth sheaf, fleece, and lamb. But, before they gave it, they took care to have letters patent showed them, by which the commissioners had power "to grant some graces to the great and small of the kingdom."—"And the said lords," the roll proceeds to say, "will, that the imposition (maletoste) which now again has been levied upon wool be entirely abolished, that the old customary duty be kept, and that they may have it by charter, and by enrolment in parliament, that such custom be never more levied, and that this grant now made to the king, or any other made in time past, shall not turn hereafter to their charge nor be drawn into precedent." The commons, who gave their answers in a separate roll, declared that they could grant no subsidy without consulting their constituents; and therefore begged that another parliament might be summoned, and in the meantime they would endeavour, by using persuasion with the people of their respective counties, to procure the grant of a reasonable aid in the next parliament.* They demanded also that the imposition on wool and lead should be taken as it used to be in former times, "inasmuch as it is enhanced without assent of the commons, or of the lords, as we understand; and if it be otherwise demanded, that any one of the commons may refuse it (le puisse arester), without being troubled on that account (saunz estre chalangé").†

Wool, however, the staple export of that age, was too easy and tempting a prey to be relinquished by a prince engaged in an empoverishing war. Seven years afterward, in 20 E. III., we find the commons praying that the great subsidy of forty shillings upon the sack of wool be taken off; and the old custom paid as heretofore was assented to and granted. The government spoke this time in a more authoritative tone. "As to this point (the answer runs), the prelates and others, seeing in what need the king stood of an aid before his passage beyond sea, to recover his rights, and defend his kingdom of England, consented, with the concurrence of the merchants, that he should have, in aid of his said war, and in defence of his said kingdom, forty shillings of subsidy for each sack of wool that should be exported beyond sea for two years to come. And upon this grant divers merchants have made many advances to our lord the king, in aid of his war; for which cause this subsidy cannot be repealed without assent of the king and his lords."‡

It is probable that Edward's counsellors wished to establish a distinction, long afterward revived by those of James I., between customs levied on merchandise at the ports and internal taxes. The statute entitled Confirmatio Chartarum had manifestly taken away the prerogative of imposing the latter, which indeed had never extended beyond the tenants of the royal demesne. But its language was not quite so explicit as to the former, although no reasonable doubt could be entertained that the intention of the legislature was to abrogate every species of imposition unauthorized by parliament. The thirtieth section of Magna Charta had provided that foreign merchants should be free from all tributes, except the ancient customs; and it was strange to suppose that natives were excluded from the benefit of that enactment. Yet

* "La commonaltée" seems in this place to mean the tenants of land, or commons of the counties in contradistinction to citizens and burgesses. † Rot. Parl., v. ii., p. 66.

* Rot. Parl., vo ii., p. 104.
† Id. ibid. ‡ Id., p. 161

owing to the ambiguous and elliptical style so frequent in our older laws, this was open to dispute, and could perhaps only be explained by usage. Edward I., in despite of both these statutes, had set a duty of threepence in the pound upon goods imported by merchant strangers. This imposition was noticed as a grievance in the third year of his successor, and repealed by the lords ordainers. It was revived however by Edward III., and continued to be levied ever afterward.*

Edward was led by the necessities of his unjust and expensive war into another arbitrary encroachment, of which we find as many complaints as of his pecuniary extortions. The commons pray, in the same parliament of 20 E. III., that commissions should not issue for the future out of chancery, to charge the people with providing men-at-arms, hobelers (or light cavalry), archers, victuals, or in any other manner, without consent of parliament. It is replied to this petition, that "it is notorious how in many parliaments the lords and commons had promised to aid the king in his quarrel with their bodies and goods as far as was in their power; wherefore the said lords, seeing the necessity in which the king stood of having aid of men-at-arms, hobelers, and archers, before his passage to recover his rights beyond sea, and to defend his realm of England, ordained, that such as had five pounds a year or more in land on this side of Trent, should furnish men-at-arms, hobelers, and archers, according to the proportion of the land they held, to attend the king at his cost; and some who would neither go themselves nor find others in their stead, were willing to give the king wherewithal he might provide himself with some in their place. And thus the thing has been done, and no otherwise. And the king wills, that henceforth what has been thus done in this necessity be not drawn into consequence or example."†

The commons were not abashed by these arbitrary pretensions; they knew that by incessant remonstrances they should gain at least one essential point, that of preventing the crown from claiming these usurpations as uncontested prerogatives. The roll of parliament in the next two years, the 21st and 22d of Edward III., is full of the same complaints on one side, and the same allegations of necessity on the other.* In the latter year the commons grant a subsidy, on condition that no illegal levying of money should take place, with several other remedial provisions; "and that these conditions should be entered on the roll of parliament, as a matter of record, by which they may have remedy, if any thing should be attempted to the contrary in time to come." From this year the complaints of extortion become rather less frequent; and soon afterward a statute was passed, "That no man should be constrained to find men-at-arms, hobelers, nor archers, other than those which hold by such services, if it be not by common assent and grant made in parliament."† Yet even in the last year of Edward's reign, when the boundaries of prerogative and the rights of parliament were better ascertained, the king lays a sort of claim to impose charges upon his subjects in cases of great necessity and for the defence of his kingdom.‡ But this more humble language indicates a change in the spirit of government, which, after long fretting impatiently at the curb, began at length to acknowledge the controlling hand of law.

These are the chief instances of a struggle between the crown and commons as to arbitrary taxation; but there are two remarkable proceedings in the 45th and 46th of Edward, which, though they would not have been endured in later times, are rather anomalies arising out of the unsettled state of the constitution and the recency of parliamentary rights, than mere encroachments of the prerogative. In the former year, parliament had granted a subsidy of fifty thousand pounds, to be collected by an assessment of twenty-two shillings and threepence upon every parish, on a presumption that the parishes in England amounted to forty-five thousand, whereas they were hardly a fifth of that number. This amazing mistake was not discovered till the parliament had been dissolved. Upon its detection, the king summoned a great council,◊ consisting of one knight, citizen, and burgess, named by himself out of two that had been returned to the last

* Case of impositions in Howell's State Trials, vol. ii., p. 371—519; particularly the argument of Mr Hakewill. Hale's Treatise on the Customs, in Hargrave's Tracts, vol. i.

Edward III. imposed another duty on cloth exported, on the pretence that as the wool must have paid a tax, he had a right to place the wrought and unwrought article on an equality. The commons remonstrated against this; but it was not repealed. This took place about 22 E. III.—Hale's Treatise, p. 175 † Rot. Parl., p. 160.

* Rot. Parl., p. 161, 166, 201
† 25 E. III., stat. v., c. 8.
‡ Rot. Parl., vol. ii., p. 366.
◊ Prynne's 4th Register p. 289

parliament To this assembly the chancellor set forth the deficiency of the last subsidy, and proved by the certificates of all the bishops in England how strangely the parliament had miscalculated the number of parishes; whereupon they increased the parochial assessment by their own authority to one hundred and sixteen shillings.* It is obvious that the main intention of parliament was carried into effect by this irregularity, which seems to have been the subject of no complaint. In the next parliament, a still more objectionable measure was resorted to; after the petitions of the commons had been answered, and the knights dismissed, the citizens and burgesses were convened before the Prince of Wales and the lords in a room near the white chamber, and solicited to renew their subsidy of forty shillings upon the tun of wine, and sixpence in the pound upon other imports, for safe convoy of shipping, during one year more; to which they assented; "and so departed."†

The concurrence of both houses in legislation necessary.

The second constitutional principle established in the reign of Edward III. was, that the king and two houses of parliament in conjunction possessed exclusively the right of legislation. Laws were now declared to be made by the king at the request of the commons, and by the assent of the lords and prelates. Such at least was the general form, though for many subsequent ages there was no invariable regularity in this respect. The commons, who till this reign were rarely mentioned, were now as rarely omitted in the enacting clause. In fact, it is evident from the rolls of parliament, that statutes were almost always founded upon their petition.‡ These petitions, with the respective answers made to them in the king's name were drawn up after the end of the session in the form of laws, and entered upon the statute-roll. But here it must be remarked, that the petitions were often extremely qualified and altered by the answer, insomuch that many statutes of this and some later reigns by no means express the true sense of the commons. Sometimes they contented themselves with showing their grievance and praying remedy from the king and his council. Of this one eminent instance is the great statute of treasons. In the petition whereon this act is founded, it is merely prayed that, "whereas the king's justices in different counties adjudge persons endicted before them to be traitors for sundry matters not known by the commons to be treason, it would please the king by his council, and by the great and wise men of the land, to declare what are treasons in this present parliament." The answer to this petition contains the existing statute, as a declaration on the king's part.* But there is no appearance that it received the direct assent of the lower house. In the next reigns we shall find more remarkable instances of assuming a consent which was never positively given.

The statute of treasons, however, was supposed to be declaratory of the ancient law; in permanent and material innovations, a more direct concurrence of all the estates was probably required. A new statute, to be perpetually incorporated with the law of England, was regarded as no light matter. It was a very common answer to a petition of the commons, in the early part of this reign, that it could not be granted without making a new law. After the parliament of 14 E. III., a certain number of prelates, barons, and counsellors, with twelve knights and six burgesses, were appointed to sit from day to day, in order to turn such petitions and answers as were fit to be perpetual into a statute; but for such as were of a temporary nature, the king issued his letters patent.† This reluctance to innovate without necessity, and to swell the number of laws which all were bound to know and obey with an accumulation of transitory enactments, led apparently to the distinction between statutes and ordinances. The latter are indeed defined by some lawyers to be regulations proceed-

Statutes distinguished from ordinances.

* Rot. Parl., p. 304.

† Idem, p. 310. In the mode of levying subsidies, a remarkable improvement took place early in the reign of Edward III. Originally two chief taxers were appointed by the king for each county, who named twelve persons in every hundred to assess the moveable estate of all inhabitants according to its real value. But in 8 E. III., on complaint of parliament, that these taxers were partial, commissioners were sent round to compound with every town and parish for a gross sum, which was from thenceforth the fixed quota of subsidy, and raised by the inhabitants themselves.—Brady on Boroughs, p. 81.

‡ Laws appear to have been drawn up and proposed to the two houses by the king, down to the time of Edward I.—Hale's Hist. of Common Law, p. 16.

Sometimes the representatives of particular places address separate petitions to the king and council; as the citizens of London, the commons of Devonshire, &c. These are intermingled with the general petitions, and both together are for the most part very numerous. In the roll of 50 Edw III. they amount to 140.

* Rot. Parl., p. 239 † Idem, p. 113

ing from the king and lords, without concurrence of the commons. But if this be applicable to some ordinances, it is certain that the word, even when opposed to statute, with which it is often synonymous, sometimes denotes an act of the whole legislature. In the 37th of Edward III., when divers sumptuary regulations against excess of apparel were made in full parliament, "it was demanded of the lords and commons, inasmuch as the matter of their petitions was novel and unheard of before, whether they would have them granted by way of ordinance or of statute. They answered that it would be best to have them by way of ordinance and not of statute, in order that any thing which should need amendment might be amended at the next parliament."* So much scruple did they entertain about tampering with the statute law of the land.

Ordinances, which, if it were not for their partial or temporary operation, could not well be distinguished from laws,† were often established in great councils. These assemblies, which frequently occurred in Edward's reign, were hardly distinguishable, except in name, from parliaments, being constituted not only of those who were regularly summoned to the house of lords, but of deputies from counties, cities, and boroughs. Several places that never returned burgesses to parliament have sent deputies to some of these councils.‡ The most remarkable of these was that held in the 27th of Edward III., consisting of one knight for each county, and of deputies from all the cities and boroughs, wherein the ordinances of the staple were established. These were previously agreed upon by the king and lords, and copies given, one to the knights, another to the burgesses. The roll tells us, that they gave their opinion in writing to the council, after much deliberation, and that this was read and discussed by the great men. These ordinances fix the staple of wool in particular places within England, prohibit English merchants from exporting that article under pain of death, inflict sundry other penalties, create jurisdictions, and, in short, have the effect of a new and important law. After they were passed, the deputies of the commons granted a subsidy for three years, complained of grievances, and received answers, as if in a regular parliament. But they were aware that these proceedings partook of some irregularity, and endeavoured, as was their constant method, to keep up the legal forms of the constitution. In the last petition of this council, the commons pray, "because many articles touching the state of the king, and common profit of his kingdom, have been agreed by him, the prelates, lords, and commons of his land, at this council, that the said articles may be recited at the next parliament, and entered upon the roll; for this cause, that ordinances and agreements made in council are not of record, as if they had been made in a general parliament." This accordingly was done at the ensuing parliament, when these ordinances were expressly confirmed, and directed to be "holden for a statute to endure always."*

It must be confessed, that the distinction between ordinances and statutes is very obscure, and perhaps no precise and uniform principle can be laid down about it. But it sufficiently appears that whatever provisions altered the common law or any former statute, and were entered upon the statute-roll, transmitted to the sheriffs, and promulgated to the people as general obligatory enactments, were holden to require the positive assent of both houses of parliament, duly and formally summoned.

Before we leave this subject, it will be proper to take notice of a remarkable stretch of prerogative, which, if drawn into precedent, would have effectually subverted this principle of parliamentary consent in legislation. In the 15th of Edward III., petitions were presented of a bolder and more innovating cast than was acceptable to the court; that no peer should be put to answer for any trespass, except before his peers; that commissioners should be assigned to examine the accounts of such as had received public moneys; that the judges and ministers should be sworn to observe the Great Charter and other laws; and that they should be appointed in parliament. The last of these was probably the most obnoxious; but the king, unwilling to defer a supply which was granted merely

* Rot. Parl., p. 280.

† "If there be any difference between an ordinance and a statute, as some have collected, it is but only this, that an ordinance is but temporary till confirmed and made perpetual; but a statute is perpetual at first, and so have some ordinances also been."—Whitelocke on Parliamentary Writ, vol. ii., p. 297. See Rot. Parl., vol. iii., p. 17; vol. iv., p. 35.

‡ These may be found in Willis's Notitia Parliamentaria. In 28 E. I., the universities were summoned to send members to a great council, in order to defend the king's right to the kingdom of Scotland.—1 Prynne.

* Rot. Parl., p. 253. 257

upon condition that these petitions should prevail, suffered them to pass into a statute, with an alteration which did not take off much from their efficacy; namely, that these officers should indeed be appointed by the king, with the advice of his council, but should surrender their charges at the next parliament, and be there responsible to any who should have cause of complaint against them. The chancellor, treasurer, and judges entered their protestation that they had not assented to the said statutes, nor could they observe them in case they should prove contrary to the laws and customs of the kingdom, which they were sworn to maintain.* This is the first instance of a protest on the roll of parliament against the passing of an act. Nevertheless they were compelled to swear on the cross of Canterbury to its observance.†

This excellent statute was attempted too early for complete success. Edward's ministers plainly saw that it left them at the mercy of future parliaments, who would readily learn the wholesome and constitutional principle of sparing the sovereign while they punished his advisers. They had recourse, therefore, to a violent measure, but which was likely in those times to be endured. By a proclamation addressed to all the sheriffs, the king revokes and annuls the statute, as contrary to the laws and customs of England, and to his own just rights and prerogatives, which he had sworn to preserve; declaring that he had never consented to its passing, but having previously protested that he would revoke it, lest the parliament should have been separated in wrath, had dissembled, as was his duty, and permitted the great seal to be affixed; and that it appeared to the earls, barons, and other learned persons of his kingdom, with whom he had consulted, that as the said statute had not proceeded from his own good-will, it was null, and could not have the name or force of law.‡ This revocation of a statute, as the price of which a subsidy had been granted, was a gross infringement of law, and undoubtedly passed for such at that time; for the right was already clear, though the remedy was not always attainable. Two years afterward Edward met his parliament, when that obnoxious statute was formally repealed.

Notwithstanding the king's unwillingness to permit this control of parliament over his administration, he suffered, or rather solicited, their interference in matters which have since been reckoned the exclusive province of the crown. This was an unfair trick of his policy. He was desirous, in order to prevent any murmuring about subsidies, to throw the war upon parliament as their own act, though none could have been commenced more selfishly for his own benefit, or less for the advantage of the people of England. It is called "the war which our lord the king has undertaken against his adversary of France, by common assent of all the lords and commons of his realm in divers parliaments."* And he several times referred it to them to advise upon the subject of peace. But the commons showed their humility or discretion by treating this as an invitation which it would show good manners to decline, though in the 18th of the king's reign they had joined with the lords in imploring the king to make an end of the war by a battle or by a suitable peace.† "Most dreaded lord," they say upon one occasion, "as to your war, and the equipment necessary for it, we are so ignorant and simple that we know not how, nor have the power to devise: wherefore we pray your grace to excuse us in this matter, and that it please you, with advice of the great and wise persons of your council, to ordain what seems best to you for the honour and profit of yourself and your kingdom; and whatever shall be thus ordained by assent and agreement for you and your lords, we readily assent to, and will hold it firmly established."‡ At another time, after their petitions had been answered, "it was showed to the lords and commons by Bartholomew de Burghersh, the king's chamberlain, how a treaty had been set on foot between the king and his adversary of France; and how he had good hope of a final and agreeable issue with God's help; to which he would not come without assent of the lords and commons. Wherefore the said chamberlain inquired on the king's part of the said lords and commons whether they would assent and agree to the peace, in case it might be had by treaty between the parties. To which the said commons with one voice replied, that whatever end it should please the king and lords to make of the treaty, would be agreeable to them. On which answer the chamberlain said to

Advice of parliament required on matters of war and peace

* Rot. Parl., p. 131. † Id., p. 128.
‡ Rymer, t. v., p. 282. This instrument betrays in its language Edward's consciousness of the violent step he was taking, and his wish to excuse it as much as possible.

* Rymer, t. v., p. 165. † Id., p. 148.
‡ 21 E. III., p. 165.

.he commons, then you will assent to a perpetual treaty of peace if it can be had. And the said commons answered at once and unanimously, yes, yes."* The lords were not so diffident. Their great station as hereditary counsellors gave them weight in all deliberations of government; and they seem to have pretended to a negative voice in the question of peace. At least they answer, upon the proposals made by David, king of Scots, in 1368, which were submitted to them in parliament, that, "saving to the said David and his heirs the articles contained therein, they saw no way of making a treaty which would not openly turn to the disherison of the king and his heirs, to which they would on no account assent; and so departed for that day."† A few years before they had made a similar answer to some other propositions from Scotland.‡ It is not improbable, that in both these cases they acted with the concurrence and at the instigation of the king; but the precedents might have been remembered in other circumstances.

Right of the commons to inquire into public abuses.

A third important acquisition of the house of commons during this reign was the establishment of their right to investigate and chastise the abuses of administration. In the fourteenth of Edward III., a committee of the lords' house had been appointed to examine the accounts of persons responsible for the receipt of the last subsidy; but it does not appear that the commons were concerned in this.§ The unfortunate statute of the next year contained a similar provision, which was annulled with the rest. Many years elapsed before the commons tried the force of their vindictive arm. We must pass onward an entire generation of man, and look at the parliament assembled in the fiftieth of Edward III. Nothing memorable as to the interference of the commons in government occurs before, unless it be their request, in the forty-fifth of the king, that no clergyman should be made chancellor, treasurer, or other great officer; to which the king answered, that he would do what best pleased his council.‖

Parliament of 50 E. III.

It will be remembered by every one who has read our history, that in the latter years of Edward's life, his fame was tarnished by the ascendency of the Duke of Lancaster and Alice Perrers. The former, a man of more ambition than his capacity seems to have warranted, even incurred the suspicion of meditating to set aside the heir of the crown, when the Black Prince should have sunk into the grave. Whether he was wronged or not by these conjectures, they certainly appear to have operated on those most concerned to take alarm at them. A parliament met in April, 1376, wherein the general unpopularity of the king's administration, or the influence of the Prince of Wales, led to very remarkable consequences.* After granting a subsidy, the commons, "considering the evils of the country, through so many wars and other causes, and that the officers now in the king's service are insufficient without further assistance for so great a charge, pray that the council be strengthened by the addition of ten or twelve bishops, lords, and others, to be constantly at hand, so that no business of weight should be despatched without the consent of all; nor smaller matters without that of four or six."¶ The king pretended to come with alacrity into this measure, which was followed by a strict restraint on them and all other officers from taking presents in the course of their duty. After this, "the said commons appeared in parliament, protesting that they had the same good-will as ever to assist the king with their lives and fortunes; but that it seemed to them, if their said liege lord had always possessed about him faithful counsellors and good officers, he would have been so rich that he would have had no need of charging his commons with subsidy or tallage, considering the great ransoms of the French and Scotch kings, and of so many other prisoners; and that it appeared to be for the private advantage of some near the king, and of others by their collusion, that the king and kingdom are so empoverished, and the commons so ruined. And they promised the king that if he would do speedy justice on such as should be found guilty, and take from them what law and reason permit,

* 28 E. III., p. 261.

† Id., p. 295. Carte says, "the lords and commons giving this advice separately, declared," &c. —Hist. of England, vol. ii., p. 518. I can find no mention of the commons doing this in the roll of parliament.

‡ Rymer, t. v., p. 769.

§ Id. p. [illegible].

‖ Id., p. 304.

* Most of our general historians have slurred over this important session. The best view, perhaps, of its secret history will be found in Lowth's Life of Wykeham; an instructive and elegant work, only to be blamed for marks of that academical point of honour, which makes a fellow of a college too indiscriminate an encomiast of its founder. Another modern book may be named with some commendation, though very inferior in its execution, Godwin's Life of Chaucer, of which the Duke of Lancaster is the political hero.

† Rymer, t. v. p. 322.

with what had been already granted in parliament, they will engage that he should be rich enough to maintain his wars for a long time, without much charging his people in any manner." They next proceeded to allege three particular grievances, the removal of the staple from Calais, where it had been fixed by parliament, through the procurement and advice of the said private counsellors about the king; the participation of the same persons in lending money to the king at exorbitant usury; and their purchasing at a low rate for their own benefit old debts from the crown, the whole of which they had afterward induced the king to repay to themselves. For these and for many more misdemeanors, the commons accused and impeached the lords Latimer and Nevil, with four merchants, Lyons, Ellis, Peachey, and Bury.* Latimer had been chamberlain, and Nevil held another office. The former was the friend and creature of the Duke of Lancaster. Nor was this parliament at all nice in touching a point where kings least endure their interference. An ordinance was made, that "whereas many women prosecute the suits of others in courts of justice by way of maintenance, and to get profit thereby, which is displeasing to the king, he forbids any woman henceforward, and especially Alice Perrers, to do so, on pain of the said Alice forfeiting all her goods, and suffering banishment from the kingdom."†

The part which the Prince of Wales, who had ever been distinguished for his respectful demeanour towards Edward, bore in this unprecedented opposition, is strong evidence of the jealousy with which he regarded the Duke of Lancaster; and it was led in the house of commons by Peter de la Mare, a servant of the Earl of March, who, by his marriage with Philippa, heiress of Lionel, duke of Clarence, stood next after the young prince Richard in lineal succession to the crown. The proceedings of this session were indeed highly popular. But no house of commons would have gone such lengths on the mere support of popular opinions, unless instigated and encouraged by higher authority. Without this, their petitions might perhaps have obtained, for the sake of subsidy, an immediate consent; but those who took the lead in preparing them must have remained unsheltered after a dissolution, to abide the vengeance of the crown, with no assurance that another parliament would espouse their cause as its own. Such indeed was their fate in the present instance. Soon after the dissolution of parliament, the Prince of Wales, who, long sinking by fatal decay, had rallied his expiring energies for this domestic combat, left his inheritance to child ten years old, Richard of Bordeaux. Immediately after this event, Lancaster recovered his influence; and the former favourites returned to court. Peter de la Mare was confined at Nottingham, where he remained two years. The citizens indeed attempted an insurrection, and threatened to burn the Savoy, Lancaster's residence, if De la Mare was not released; but the Bishop of London succeeded in appeasing them.* A parliament met next year, which overthrew the work of its predecessor, restored those who had been impeached, and repealed the ordinance against Alice Perrers.† So little security will popular assemblies ever afford against arbitrary power, when deprived of regular leaders and the consciousness of mutual fidelity.

The policy adopted by the Prince of Wales and Earl of March, in employing the house of commons as an engine of attack against an obnoxious ministry, was perfectly novel, and indicates a sensible change in the character of our constitution. In the reign of Edward II., parliament had little share in resisting the government; much more was effected by the barons, through risings of their feudal tenantry. Fifty years of authority better respected, of law better enforced, had rendered these more perilous, and of a more violent appearance than formerly. A surer resource presented itself in the increased weight of the lower house in parliament. And this indirect aristocratical influence gave a surprising impulse to that assembly, and particularly tended to establish beyond question its control over public abuses. It is less just to remark, that it also tended to preserve the relation and harmony between each part and the other, and to prevent that jarring of emulation and jealousy, which, though generally found in the division of power between a noble and a popular estate, has scarcely ever caused a dissension, except in cases of little moment, between our two houses of parliament?

* Rymer t. v., p. 332 † Id., p. 329

* Anonym. Hist. Edw. III., ad calcem Hemingford, pp. 444, 448. Walsingham gives a different reason, p. 192.

† Rot. Parl., p. 374. Not more than six or seven of the knights who had sat in the last parliament were returned to this, as appears by the writs in Prynne's 4th Register, p. 302, 311

Richard II. Great increase of the power of the commons.

The commons had sustained with equal firmness and discretion a defensive war against arbitrary power under Edward III.: they advanced with very different steps towards his successor. Upon the king's death, though Richard's coronation took place without delay, and no proper regency was constituted, yet a council of twelve, whom the great officers of state were to obey, supplied its place to every effectual intent. Among these the Duke of Lancaster was not numbered; and he retired from court in some disgust. In the first parliament of the young king, a large proportion of the knights who had sat in that which impeached the Lancasterian party were returned.* Peter de la Mare, now released from prison, was elected speaker; a dignity which, according to some, he had filled in the Good Parliament, as that of the fiftieth of Edward III. was popularly styled; though the rolls do not mention either him or any other as bearing that honourable name before Sir Thomas Hungerford in the parliament of the following year.† The prosecution against Alice Perrers was now revived; not, as far as appears, by direct impeachment of the commons; but articles were exhibited against her in the house of lords on the king's part, for breaking the ordinance made against her intermeddling at court; upon which she received judgment of banishment and forfeiture.‡ At the request of the lower house, the lords in the king's name appointed nine persons of different ranks; three bishops, two earls, two bannerets, and two bachelors, to be a permanent council about the king, so that no business of importance should be transacted without their unanimous consent. The king was even compelled to consent that, during his minority, the chancellor, treasurer, judges, and other chief officers should be made in parliament; by which provision, combined with that of the parliamentary council, the whole executive government was transferred to the two houses. A petition that none might be employed in the king's service, nor belong to his council, who had been formerly accused upon good grounds, struck at Lord Latimer, who had retained some degree of power in the new establishment. Another, suggesting that Gascony, Ireland, Artois, and the Scottish marches were in danger of being lost for want of good officers, though it were so generally worded as to leave the means of remedy to the king's pleasure, yet shows a growing energy and self-confidence in that assembly, which not many years before had thought the question of peace or war too high for their deliberation. Their subsidy was sufficiently liberal; but they took care to pray the king that fit persons might be assigned for its receipt and disbursement, lest it should any way be diverted from the purposes of the war. Accordingly Walworth and Philpot, two eminent citizens of London, were appointed to this office and sworn in parliament to its execution.*

But whether through the wastefulness of government, or rather because Edward's legacy, the French war, like a ruinous and interminable lawsuit, exhausted all public contributions, there was an equally craving demand for subsidy at the next meeting of parliament. The commons now made a more serious stand. The speaker, Sir James Pickering, after the protestation against giving offence, which has since become more matter of form than perhaps it was then considered, reminded the lords of the council of a promise made to the last parliament, that, if they would help the king for once with a large subsidy so as to enable him to undertake an expedition against the enemy, he trusted not to call on them again, but to support the war from his own revenues; in faith of which promise there had been granted the largest sum that any king of England had ever been suffered to levy within so short a time, to the utmost loss and inconvenience of the commons; part of which ought still to remain in the treasury, and render it unnecessary to burden anew the exhausted people. To this Scrope, lord-steward of the household, protesting that he knew not of any such promise, made answer by order of the king, that, "saving the honour and reverence of our lord the king and the lords there present, the commons did not speak truth in asserting that part of the last subsidy should be still in the treasury; it being notorious that every penny had gone into the hands of Walworth and Philpot, appointed and sworn treasurers in the last parliament, to receive and expend it upon the purposes of the war, for which they

* Walsingham, p. 200, says pene omnes; but the list published in Prynne's 4th Register induces me to qualify this loose expression. Alice Perrers had bribed, he tells us, many of the lords, and all the lawyers of England; yet by the perseverance of these knights she was convicted.

‡ Rot. Parl., vol. ii., p. 374.

† Rot. Parl., vol. iii., p. 12.

* Rot. Parl., vol. iii., p. 12.

had in effect disbursed the whole." Not satisfied with this general justification, the commons pressed for an account of the expenditure. Scrope was again commissioned to answer, that "though it had never been seen, that of a subsidy or other grant made to the king in parliament or out of parliament by the commons, any account had afterward been rendered to the commons, or to any other except the king and his officers, yet the king, to gratify them, of his own accord, without doing it by way of right, would have Walworth, along with certain persons of the council, exhibit to them in writing a clear account of the receipt and expenditure, upon condition that this should never be used as a precedent, nor inferred to be done otherwise than by the king's spontaneous command." The commons were again urged to provide for the public defence, being their own concern as much as that of the king. But they merely shifted their ground and had recourse to other pretences. They requested that five or six peers might come to them, in order to discuss this question of subsidy. The lords entirely rejected this proposal, and affirmed that such a proceeding had never been known except in the three last parliaments; but allowed that it had been the course to elect a committee of eight or ten from each house, to confer easily and without noise together. The commons acceded to this, and a committee of conference was appointed, though no result of their discussion appears upon the roll.

Upon examining the accounts submitted to them, these sturdy commoners raised a new objection. It appeared that large sums had been expended upon garrisons in France and Ireland, and other places beyond the kingdom, of which they protested themselves not liable to bear the charge. It was answered that Gascony and the king's other dominions beyond sea were the outworks of England, nor could the people ever be secure from war at their thresholds unless these were maintained. They lastly insisted that the king ought to be rich through the wealth that had devolved on him from his grandfather. But this was affirmed, in reply, to be merely sufficient for the payment of Edward's creditors. Thus driven from all their arguments, the commons finally consented to a moderate additional imposition upon the export of wool and leather,* which were already subject to considerable duties, apologizing on account of their poverty for the slenderness of their grant.

The necessities of government, however, let their cause be what it might, were by no means feigned; and a new parliament was assembled about seven months after the last, wherein the king, without waiting for a petition, informed the commons that the treasurers were ready to exhibit their accounts before them This was a signal victory after the reluctant and ungracious concession made to the last parliament. Nine persons of different ranks were appointed at the request of the commons to investigate the state of the revenue, and the disposition which had been made of the late king's personal estate. They ended by granting a poll-tax, which they pretended to think adequate to the supply required.* But in those times no one possessed any statistical knowledge, and every calculation which required it was subject to enormous error, of which we have already seen an eminent example.† In the next parliament (3 Ric. II.) it was set forth that only £22,000 had been collected by the poll-tax, while the pay of the king's troops hired for the expedition to Britany, the pretext of the grant, had amounted for but half a year to £50,000. The king, in short, was more straitened than ever. His distresses gave no small advantage to the commons. Their speaker was instructed to declare that, as it appeared to them, if the affairs of their liege lord had been properly conducted at home and abroad, he could not have wanted aid of his commons, who are now poorer than before. They pray that, as the king was so much advanced in age and discretion, his perpetual council (appointed in his first parliament) might be discharged of their labours; and that, instead of them, the five chief officers of state, to wit, the chancellor, treasurer, keeper of the privy seal, chamberlain, and steward of the household, might be named in parliament, and declared to the commons as the king's sole counsellors, not removable before the next parliament. They required also a general commission to be made out, similar to that in the last session, giving powers to a certain number of peers and other distinguished persons, to inquire into the state of the household, as well as into all receipts and expenses since the king's accession. The former petition seems to have been passed over ‡ but a com-

* Rot. Parl., p. 35—38

* Rot. Parl., p. 57. † See ante, p. 375.

‡ Nevertheless, the commons repeated it in their schedule of petitions; and received an evasive

mission as requested was made out to three prelates, three earls, three bannerets, three knights, and three citizens.* After guarding thus, as they conceived, against malversation, but in effect rather protecting their posterity than themselves, the commons prolonged the last imposition on wool and leather for another year.

It would be but repetition to make extracts from the rolls of the two next years; we have still the same tale; demand of subsidy on one side, remonstrance and endeavours at reformation on the other. After the tremendous insurrection of the villeins, in 1382, a parliament was convened to advise about repealing the charters of general manumission, extorted from the king by the pressure of circumstances. In this measure all concurred; but the commons were not afraid to say that the late risings had been provoked by the burdens which a prodigal court had called for in the preceding session. Their language is unusually bold. "It seemed to them, after full deliberation," they said, "that unless the administration of the kingdom were speedily reformed, the kingdom itself would be utterly lost and ruined for ever, and therein their lord the king, with all the peers and commons, which God forbid. For true it is that there are such defects in the said administration, as well about the king's person and his household, as in his courts of justice: and by grievous oppressions in the country through maintainers of suits, who are, as it were, kings in the country, that right and law are come to nothing, and the poor commons are from time to time so pillaged and ruined, partly by the king's purveyors of the household, and others who pay nothing for what they take, partly by the subsidies and tallages raised upon them, and besides by the oppressive behaviour of the servants of the king and other lords, and especially of the aforesaid maintainers of suits, that they are reduced to greater poverty and discomfort than ever they were before. And moreover, though great sums have been continually granted by and levied upon them for the defence of the kingdom, yet they are not the better defended against their enemies, but every year are plundered and wasted by sea and land, without any relief. Which calamities the said poor commons, who lately used to live in honour and prosperity, can no longer endure. And to speak the real truth, these injuries lately done to the poorer commons more than they ever suffered before, caused them to rise, and to commit the mischief done in their late riot; and there is still cause to fear greater evils, if sufficient remedy be not timely provided against the outrages and oppressions aforesaid. Wherefore may it please our lord the king, and the noble peers of the realm now assembled in this parliament, to provide such remedy and amendment as to the said administration, that the state and dignity of the king in the first place, and of the lords may be preserved, as the commons have always desired, and the commons may be put in peace; removing, as soon as they can be detected, evil ministers and counsellors, and putting in their stead the best and most sufficient, and taking away all the bad practices which have led to the last rising, or else none can imagine that this kingdom can longer subsist without greater misfortunes than it ever endured. And for God's sake let it not be forgotten, that there be put about the king and of his council the best lords and knights that can be found in the kingdom.

"And be it known (the entry proceeds) that after the king our lord, with the peers of the realm and his council, had taken advice upon these requests made to him for his good and his kingdom's as it really appeared to him, willed and granted, that certain bishops, lords, and others should be appointed to survey, and examine in privy council both the government of the king's person and of his household, and to suggest proper remedies wherever necessary, and report them to the king. And it was said by the peers in parliament, that as it seemed to them, if reform of government were to take place throughout the kingdom, it should begin by the chief member, which is the king himself, and so from person to person, as well churchmen as others, and place to place, from higher to lower, without sparing any degree."* A considerable number of commissioners were accordingly appointed, whether by the king alone or in parliament does not appear; the latter, however, is more probable. They seem to have made some progress in the work of reformation, for we find that the officers of the household were sworn to observe their

swer, referring to an ordinance made in the first parliament of the king, the application of which is indefinite, p. 379.

* See ante, p. 377. In Rymer, t. viii., p. 250, the Archbishop of York's name appears among these commissioners, which makes their number sixteen. But it is plain by the instrument that only fifteen were meant to be appointed.

* Rot. Parl., 5 R. II. n. 100.

regulations. But in all likelihood these were soon neglected.

It is not wonderful, that with such feelings of resentment towards the crown, the commons were backward in granting subsidies. Perhaps the king would not have obtained one at all if he had not withheld his charter of pardon for all offences committed during the insurrection. This was absolutely necessary to restore quiet among the people; and though the members of the commons had certainly not been insurgents, yet inevitable irregularities had occurred in quelling the tumults, which would have put them too much in the power of those unworthy men who filled the benches of justice under Richard. The king declared that it was unusual to grant a pardon without a subsidy; the commons still answered that they would consider about the matter; and the king instantly rejoined that he would consider about his pardon (s'aviseroit de sa dite grace) till they had done what they ought. They renewed at length the usual tax on wool and leather.*

This extraordinary assumption of power by the commons was not merely owing to the king's poverty. It was encouraged by the natural feebleness of a disunited government. The high rank and ambitious spirit of Lancaster gave him no little influence, though contending with many enemies at court, as well as the ill-will of the people. Thomas of Woodstock, the king's youngest uncle, more able and turbulent than Lancaster, became, as he grew older, an eager competitor for power, which he sought through the channel of popularity. The earls of March, Arundel, and Warwick bore a considerable part, and were the favourites of parliament. Even Lancaster, after a few years, seems to have fallen into popular courses, and recovered some share of public esteem. He was at the head of the reforming commission in the fifth of Richard II., though he had been studiously excluded from those preceding. We cannot hope to disentangle the intrigues of this remote age, as to which our records are of no service, and the chroniclers are very slightly informed. So far as we may conjecture, Lancaster, finding his situation insecure at court, began to solicit the favour of the commons, whose hatred of the administration abated their former hostility towards him.†

The character of Richard II. was now developing itself, and the hopes excited by his remarkable presence of mind in confronting the rioters on Blackheath were rapidly destroyed. Not that he was wanting in capacity, as has been sometimes imagined. For if we measure intellectual power by the greatest exertion it ever displays, rather than by its average results, Richard II. was a man of considerable talents. He possessed, along with much dissimulation, a decisive promptitude in seizing the critical moment for action. Of this quality, besides his celebrated behaviour towards the insurgents, he gave striking evidence in several circumstances which we shall have shortly to notice. But his ordinary conduct belied the abilities which on these rare occasions shone forth, and rendered them ineffectual for his security. Extreme pride and violence, with an inordinate partiality for the most worthless favourites, were his predominant characteristics. In the latter quality, and in the events of his reign, he forms a pretty exact parallel to Edward II. Scrope, lord chancellor, who had been appointed in parliament, and was understood to be irremovable without its concurrence, lost the great seal for refusing to set it to some prodigal grants. Upon a slight quarrel with Archbishop Courtney, the king ordered his temporalities to be seized, the execution of which Michael de la Pole, his new chancellor, and a favourite of his own, could hardly prevent. This was accompanied with indecent and outrageous expressions of anger, unworthy of his station and of those whom he insulted.* Character of Richard.

Though no king could be less respectable than Richard, yet the constitution invested a sovereign with such ample prerogative, that it was far less easy to resist his personal exercise of power than the unsettled councils of a minority. In the parliament 6 R. II., sess. 2, the commons pray certain lords whom they name, to be assigned as their advisers. This had been permitted in the two last sessions without exception.† But the king, in granting their request, reserved He acquires more power on his majority.

* Rot. Parl., 5 R. II, p. 104.

† The commons granted a subsidy, 7 R. II., to support Lancaster's war in Castile.—R. P., p. 284. Whether the populace changed their opinion of him, I know not. He was still disliked by them two years before. The insurgents of 1382 are said to have compelled men to swear that they would obey King Richard and the commons, and that they would accept no king named John.—Walsingham, p. 248.

* Walsingham, pp. 290, 315, 317.

† Rot. Parl., 5 R. II., p. 100. 6 R. II., sess. 1, p. 134.

his right of naming any others.* Though the commons did not relax in their importunities for the redress of general grievances, they did not venture to intermeddle as before with the conduct of administration. They did not even object to the grant of the marquisate of Dublin, with almost a princely dominion over Ireland; which enormous donation was confirmed by act of parliament to Vere, a favourite of the king.† A petition that the officers of state should annually visit and inquire into his household, was answered, that the king would do what he pleased.‡ Yet this was little in comparison with their former proceedings.

Proceedings of parliament in the tenth of Richard.

There is nothing, however, more deceitful to a monarch, unsupported by an armed force, and destitute of wary advisers, than this submission of his people. A single effort was enough to overturn his government. Parliament met in the tenth year of his reign, steadily determined to reform the administration, and especially to punish its chief leader, Michael de la Pole, earl of Suffolk, and lord chancellor. According to the remarkable narration of a contemporary historian,§ too circumstantial to be rejected, but rendered somewhat doubtful by the silence of all other writers and of the parliamentary roll, the king was loitering at his palace at Eltham when he received a message from the two houses requesting the dismissal of Suffolk, since they had matter to allege against him that they could not move while he kept the office of chancellor. Richard, with his usual intemperance, answered that he would not for their request remove the meanest scullion from his kitchen. They returned a positive refusal to proceed on any public business until the king should appear personally in parliament, and displace the chancellor. The king required forty knights to be deputed from the rest, to inform him clearly of their wishes. But the commons declined a proposal, in which they feared, or affected to fear, some treachery. At length the Duke of Glocester, and Arundel, bishop of Ely, were commissioned to speak the sense of parliament, and they delivered it, if we may still believe what we read, in very extraordinary language, asserting that there was an ancient statute, according to which, if the king absented himself from parliament without just cause during forty days, which he had now exceeded, every man might return without permission to his own country; and moreover there was another statute and (as they might more truly say) a precedent of no remote date, that if a king, by bad counsel, or his own folly and obstinacy, alienated himself from his people, and would not govern according to the laws of the land and the advice of the peers, but madly and wantonly followed his own single will, it should be lawful for them, with the common assent of the people, to expel him from his throne, and elevate to it some near kinsman of the royal blood. By this discourse the king was induced to meet his parliament, where Suffolk was removed from his office, and the impeachment against him commenced.*

Impeachment of Suffolk.

The charges against this minister, without being wholly frivolous, were not so weighty as the clamour of the commons might have led us to expect. Besides forfeiting all his grants from the crown, he was committed to prison, there to remain till he should have paid such fine as the king might impose; a sentence that would have been outrageously severe in many cases, though little more than nugatory in the present.†

Commission of reform.

This was the second precedent of that grand constitutional resource, parliamentary impeachment: and more remarkable, from the eminence of the person attacked, than that of Lord Latimer, in the fiftieth year of

* Rot. Parl., 9 R. II., p. 145. † Id., p. 208.

‡ Id., p. 213. It is however asserted in the articles of impeachment against Suffolk, and admitted by his defence, that nine lords had been appointed in the last parliament, viz., 9 R. II., to inquire into the state of the household, and reform whatever was amiss. But nothing of this appears in the roll.

§ Knyghton, in Twysden, x. Script., col. 2680.

* Upon full consideration, I am much inclined to give credit to this passage of Knyghton as to the main facts; and, perhaps, even the speech of Glocester and the Bishop of Ely is more likely to have been made public by them, than invented by so jejune an historian. Walsingham indeed says nothing of the matter; but he is so unequally informed, and so frequently defective, that we can draw no strong inference from his silence. What most weighs with me is that parliament met on Oct. 1, 1387, and was not dissolved till Nov. 28; a longer period than the business done in it seems to have required; and also that Suffolk, who opened the session as chancellor, is styled "darrein chancellor" in the articles of impeachment against him; so that he must have been removed in the interval, which tallies with Knyghton's story. Besides, it is plain, from the famous question subsequently put by the king to his judges at Nottingham, that both the right of retiring without a regular dissolution and the precedent of Edward II. had been discussed in parliament, which does not appear anywhere else than in Knyghton.

† Rot. Parl., vol. iii. p. 219

Edward III.* The commons were content to waive the prosecution of any other ministers; but they rather chose a scheme of reforming the administration, which should avert both the necessity of punishment, and the malversations which provoked it. They petitioned the king to ordain in parliament certain chief officers of his household, and other lords of his council, with power to reform those abuses, by which his crown was so much blemished, that the laws were not kept, and his revenues were dilapidated, confirming by a statute a commission for a year, and forbidding, under heavy penalties, any one from opposing, in private or openly, what they should advise.† With this the king complied, and a commission founded upon the prayer of parliament was established by statute. It comprehended fourteen persons of the highest eminence for rank and general estimation; princes of the blood and ancient servants of the crown, by whom its prerogatives were not likely to be unnecessarily impaired. In fact, the principle of this commission, without looking back at the precedents in the reign of John, Henry III., and Edward II., which yet were not without their weight as constitutional analogies, was merely that which the commons had repeatedly maintained during the minority of the present king, and which had produced the former commissions of reform in the third and fifth years of his reign. These were upon the whole nearly the same in their operation. It must be owned there was a more extensive sway virtually given to the lords now appointed, by the penalties imposed on any who should endeavour to obstruct what they might advise; the design as well as tendency of which was no doubt to throw the whole administration into their hands during the period of this commission.

Those who have written our history with more or less of a tory bias exclaim against this parliamentary commission as an unwarrantable violation of the king's sovereignty, and even impartial men are struck at first sight by a measure that seems to overset the natural balance of our constitution. But it would be unfair to blame either those concerned in this commission, some of whose names at least have been handed down with unquestioned respect, or those high-spirited representatives of the people whose patriot firmness has been hitherto commanding all our sympathy and gratitude, unless we could distinctly pronounce by what gentler means they could restrain the excesses of government. Thirteen parliaments had already met since the accession of Richard; in all the same remonstrances had been repeated, and the same promises renewed. Subsidies, more frequent than in any former reign, had been granted for the supposed exigences of the war; but this was no longer illuminated by those dazzling victories, which give to fortune the mien of wisdom; the coasts of England were perpetually ravaged, and her trade destroyed; while the administration incurred the suspicion of diverting to private uses that treasure which they so feebly and unsuccessfully applied to the public service. No voice of his people, until it spoke in thunder, would stop an intoxicated boy in the wasteful career of dissipation. He loved festivals and pageants the prevailing folly of his time, with unusual frivolity; and his ordinary living is represented as beyond comparison more showy and sumptuous than even that of his magnificent and chivalrous predecessor. Acts of parliament were no adequate barriers to his misgovernment "Of what avail are statutes," says Walsingham, "since the king with his privy council is wont to abolish what parliament has just enacted?"* The constant prayer of the commons in every session, that former statutes might be kept in force, is no slight presumption that they were not secure of being regarded. It may be true, that Edward III.'s government had been full as arbitrary, though not so unwise, as his grandson's; but this is the strongest argument, that nothing less than an extraordinary remedy could preserve the still unstable liberties of England.

The best plea that could be made for Richard was his inexperience, and the misguided suggestions of favourites. This, however, made it more necessary to remove those false advisers, and to supply that inexperience. Unquestionably the choice of ministers is reposed in the sovereign; a trust, like every other attribute of legitimate power, for the public good; not, what no legitimate power can ever be, the instrument of selfishness or ca

* Articles had been exhibited by the chancellor before the peers, in the seventh of the king, against Spencer, bishop of Norwich, who had led a considerable army into a disastrous expedition against the Flemings, adherents to the antipope Clement, in the schism. This crusade had been exceedingly popular, but its ill success had the usual effect. The commons were not parties in this proceeding.
Rot. Parl., p 153 † Id., p. 221

* Rot Parl., p. 281

price. There is something more sacred than the prerogative, or even than the constitution; the public weal, for which all powers are granted, and to which they must all be referred. For this public weal it is confessed to be sometimes necessary to shake the possessor of the throne out of his seat; could it never be permitted to suspend, though but indirectly and for a time, the positive exercise of misapplied prerogatives? He has learned in a very different school from myself, who denies to parliament at the present day a preventive as well as vindictive control over the administration of affairs; a right of resisting, by those means which lie within its sphere, the appointment of unfit ministers. These means are now indirect; they need not to be the less effectual, and they are certainly more salutary on that account. But we must not make our notions of the constitution, in its perfect symmetry of manhood, the measure of its infantine proportions, nor expect from a parliament just struggling into life, and "pawing to get free its hinder parts," the regularity of definite and habitual power.

It is assumed rather too lightly by some of those historians to whom I have alluded, that these commissioners, though but appointed for a twelvemonth, designed to retain longer, or would not in fact have surrendered their authority. There is certainly a danger in these delegations of pre-eminent trust; but I think it more formidable in a republican form than under such a government as our own. The spirit of the people, the letter of the law, were both so decidedly monarchical, that no glaring attempt of the commissioners to keep the helm continually in their hands, though it had been in the king's name, would have had a fair probability of success. And an oligarchy of fourteen persons, different in rank and profession, even if we should impute criminal designs to all of them, was ill calculated for permanent union. Indeed, the facility with which Richard reassumed his full powers two years afterward, when misconduct had rendered his circumstances far more unfavourable, gives the corroboration of experience to this reasoning. By yielding to the will of his parliament, and to a temporary suspension of prerogative, this unfortunate prince might probably have reigned long and peacefully; the contrary course of acting led eventually to his deposition and miserable death.

Before the dissolution of parliament, Richard made a verbal protestation, that nothing done therein should be in prejudice of his rights; a reservation not unusual when any remarkable concession was made, but which could not decently be interpreted, whatever he might mean, as a dissent from the statute just passed. Some months had intervened, when the king, who had already released Suffolk from prison and restored him to his favour, procured from the judges whom he had summoned to Nottingham a most convenient set of answers to questions concerning the late proceedings in parliament. Tresilian and Belknap, chief justices of the King's Bench and Common Pleas, with several other judges, gave it under their seals, that the late statute and commission were derogatory to the prerogative; that all who procured it to be passed, or persuaded or compelled the king to consent to it, were guilty of treason; that the king's business must be proceeded upon before any other in parliament; that he may put an end to the session at his pleasure; that his ministers cannot be impeached without his consent; that any members of parliament contravening the three last articles incur the penalties of treason, and especially he who moved for the sentence of deposition against Edward II. to be read; and that the judgment against the Earl of Suffolk might be revoked as altogether erroneous.

Answers of the judges to Richard's questions.

These answers, perhaps extorted by menaces, as all the judges except Tresilian protested before the next parliament, were for the most part servile and unconstitutional. The indignation which they excited, and the measures successfully taken to withstand the king's designs, belong to general history; but I shall pass slightly over that season of turbulence, which afforded no legitimate precedent to our constitutional annals. Of the five lords appellants as they were called, Glocester, Derby, Nottingham, Warwick, and Arundel, the three former, at least, have little claim to our esteem; but in every age, it is the sophism of malignant and peevish men to traduce the cause of freedom itself, on account of the interested motives by which its ostensible advocates have frequently been actuated. The parliament, who had the country thoroughly with them, acted no doubt honestly, but with an inattention to the rules of law, culpable indeed, yet from which the most civilized of their successors, in the heat of passion and triumph, have scarcely been exempt. Whether all with whom they dealt severely, some

Subsequent revolution.

of them apparently of good previous reputation, merited such punishment, is more than, upon uncertain evidence, a modern writer can profess to decide.*

Notwithstanding the death or exile of all Richard's favourites, and the oath taken not only by parliament, but by every class of the people, to stand by the lords appellants, we find him, after about a year, suddenly annihilating their pretensions, and snatching the reins again without obstruction. The secret cause of this event is among the many obscurities that attend the history of his reign. It was conducted with a spirit and activity which broke out two or three times in the course of his imprudent life; but we may conjecture that he had the advantage of disunion among his enemies. For some years after this, the king's administration was prudent. The great seal, which he took away from Archbishop Arundel, he gave to Wykeham, bishop of Winchester, another member of the reforming commission, but a man of great moderation and political experience. Some time after he restored the seal to Arundel, and reinstated the Duke of Glocester in the council. The Duke of Lancaster, who had been absent during the transactions of the tenth and eleventh years of the king, in prosecution of his Castilian war, formed a link between the parties, and seems to have maintained some share of public favour.

There was now a more apparent harmony between the court and the parliament. It seems to have been tacitly agreed that they should not interfere with the king's household expenses; and they gratified him in a point where his honour had been most wounded, declaring his prerogative to be as high and unimpaired as that of his predecessors, and repealing the pretended statute by virtue of which Edward II. was said to have been deposed.† They were provident enough, however, to grant conditional subsidies, to be levied only in case of a royal expedition against the enemy; and several were accordingly remitted by proclamation, this condition not being fulfilled. Richard never ventured to recall his favourites, though he testified his unabated affection for Vere by a pompous funeral. Few complaints, unequivocally affecting the ministry, were presented by the commons. In one parliament, the chancellor, treasurer, and council resigned their offices, submitting themselves to its judgment, in case any matter of accusation should be alleged against them. The commons, after a day's deliberation probably to make their approbation appear more solemn, declared in full parliament that nothing amiss had been found in the conduct of these ministers, and that they held them to have faithfully discharged their duties. The king reinstated them accordingly; with a protestation that this should not be made a precedent, and that it was his right to change his servants at pleasure.*

Greater harmony between the king and parliament.

But this summer season was not to last for ever. Richard had but dissembled with those concerned in the transactions of 1388, none of whom he could ever forgive. These lords in lapse of time were divided among each other. The earls of Derby and Nottingham were brought into the king's interest. The Earl of Arundel came to an open breach with the Duke of Lancaster, whose pardon he was compelled to ask for an unfounded accusation in parliament.† Glocester's ungoverned ambition, elated by popularity, could not brook the ascendency of his brother Lancaster, who was much less odious to the king. He had constantly urged and defended the concession of Guienne to this prince, to be held for life, reserving only his liege homage to Richard as king of France;‡ a grant as unpopular among the natives of that country as it was derogatory to the crown; but Lancaster was not much indebted to his brother for assistance, which was only given in order to diminish his influence in England. The truce with France, and the king's French marriage, which Lancaster supported, were passionately opposed by Glocester. And the latter had given keener provocation, by speaking contemptuously of that misalliance with Katherine Swineford, which contaminated the blood of Plantagenet. To the parliament summoned in the 20th of Richard, one object of which was to legitimate the Duke of Lancaster's antenuptial children by this lady, neither Glocester nor Arundel would repair. There passed in this assembly something remarkable, as it exhibits not only the arbitrary temper of the king, a point by no

Disunion among some leading peers.

* The judgment against Simon de Burley, one of those who were executed on this occasion, upon impeachment of the commons, was reversed under Henry IV.; a fair presumption of its injustice.—Rot. Parl., vol. iii., p. 464.

† Rot. Parl., 14 R. II., p. 279. 15 R. II., p. 286.

* Rot. Parl., 13 R. II., p. 258.

† Id., 17 R. II., p. 313.

‡ Rymer, t. vii., p. 583, 659.

means doubtful, but the inefficiency of the commons to resist it, without support from political confederacies of the nobility. The circumstances are thus related in the record.

Richard's prosecution of Haxey.

During the session, the king sent for the lords into parliament one afternoon, and told them how he had heard of certain articles of complaint made by the commons in conference with them a few days before, some of which appeared to the king against his royalty, estate, and liberty, and commanded the chancellor to inform him fully as to this. The chancellor accordingly related the whole matter, which consisted of four alleged grievances; namely, that sheriffs and escheators, notwithstanding a statute, are continued in their offices beyond a year;* that the Scottish marches were not well kept; that the statute against wearing great men's liveries was disregarded; and, lastly, that the excessive charges of the king's household ought to be diminished, arising from the multitude of bishops and of ladies who are there maintained at his cost.

Upon this information the king declared to the lords, that through God's gift he is by lineal right of inheritance king of England, and will have the royalty and freedom of his crown, from which some of these articles derogate. The first petition, that sheriffs should never remain in office beyond a year, he rejected; but, passing lightly over the rest, took most offence, that the commons, who are his lieges, should take on themselves to make any ordinance respecting his royal person or household, or those whom he might please to have about him. He enjoined, therefore, the lord to declare plainly to the commons his pleasure in this matter; and especially directed the Duke of Lancaster to make the speaker give up the name of the person who presented a bill for this last article in the lower house.

The commons were in no state to resist this unexpected promptitude of action in the king. They surrendered the obnoxious bill, with its proposer, one Thomas Haxey, and with great humility made excuse, that they never designed to give offence to his majesty, nor to interfere with his household or attendants, knowing well that such things do not belong to them, but to the king alone, but merely to draw his attention, that he might act therein as should please him best. The king forgave these pitiful suppliants; but Haxey was adjudged in parliament to suffer death as a traitor. As, however, he was a clerk,* the Archbishop of Canterbury, at the head of the prelates, obtained of the king that his life might be spared, and that they might have the custody of his person; protesting that this was not claimed by way of right, but merely of the king's grace.†

This was an open defiance of parliament, and a declaration of arbitrary power. For it would be impossible to contend, that after the repeated instances of control over public expenditure by the commons since the 50th of Edward III., this principle was novel and unauthorized by the constitution; or that the right of free speech demanded by them in every parliament was not a real and indisputable privilege. The king, however, was completely successful, and having proved the feebleness of the commons, fell next upon those he more dreaded. By a skilful piece of treachery he seized the Duke of Glocester, and spread consternation among all his party. A parliament was summoned, in which the only struggle was to outdo the king's wishes, and thus to efface their former transgressions.‡

Arbitrary measures of the king.

* Hume has represented this as if the commons had petitioned for the continuance of sheriffs beyond a year, and grounds upon this mistake part of his defence of Richard II. (note to vol. ii., p. 270, 4to. edit.) For this he refers to Cotton's Abridgment; whether rightly or not I cannot say, being little acquainted with that inaccurate book, upon which it is unfortunate that Hume relied so much. The passage from Walsingham in the same note is also wholly perverted, as the reader will discover without further observation. An historian must be strangely warped, who quotes a passage explicitly complaining of illegal acts in order to infer that those very acts were lega.

* The church would perhaps have interfered in behalf of Haxey, if he had only received the tonsure. But it seems that he was actually in orders; for the record calls him Sir Thomas Haxey, a title at that time regularly given to the parson of a parish. If this be so, it is a remarkable authority for the clergy's capacity of sitting in parliament.

† Rot. Parl., 20 R. II., p. 339. In Henry IV.'s first parliament, the commons petitioned for Haxey's restoration, and truly say, that his sentence was en aneantissement des custumes de la commune, p. 434. His judgment was reversed by both houses, as having past de volonté du Roy Richard en contre droit, et la course quel avoit este devant en parlement, p. 480. There can be no doubt with any man who looks attentively at the passages relative to Haxey, that he was a member of parliament; though this was questioned a few years ago by the committee of the house of commons who made a report on the right of the clergy to be elected; a right which, I am inclined to believe, did exist down to the Reformation, as the grounds alleged for Nowell's expulsion in the first of Mary besides this instance of Haxey, conspire to prove, though it has since been lost by disuse.

‡ This assembly, if we may trust the enemy

Glocester who had been murdered at Calais, was attainted after his death; Arundel was beheaded, his brother the Archbishop of Canterbury deposed and banished, Warwick and Cobham sent beyond sea. The commission of the tenth, the proceedings in parliament of the eleventh year of the king, were annulled. The answers of the judges to the questions put at Nottingham, which had been punished with death and exile, were pronounced by parliament to be just and legal. It was declared high treason to procure the repeal of any judgment against persons therein impeached. Their issue male were disabled from ever sitting in parliament, or holding place in council. These violent ordinances, as if the precedent they were then overturning had not shielded itself with the same sanction, were sworn to by parliament upon the cross of Canterbury, and confirmed by a national oath, with the penalty of excommunication denounced against its infringers. Of those recorded to have bound themselves by this adjuration to Richard, far the greater part had touched the same relics for Glocester and Arundel ten years before, and two years afterward swore allegiance to Henry of Lancaster.*

In the fervour of prosecution this parliament could hardly go beyond that whose acts they were annulling; and each is alike unworthy to be remembered in the way of precedent. But the leaders of the former, though vindictive and turbulent, had a concern for the public interest; and after punishing their enemies, left the government upon its right foundation. In this all regard for liberty was extinct; and the commons set the dangerous precedent of granting the king a subsidy upon wool during his life This remarkable act of severity was accompanied by another, less unexampled, but, as it proved, of more ruinous tendency. The petitions of the commons not having been answered during the session, which they were always anxious to conclude, a commission was granted for twelve peers and six commoners to sit after the dissolution, and "examine, answer, and fully determine as well all the said petitions, and the matters therein comprised, as all other matters and things moved in the king's presence, and all things incident thereto not yet determined, as shall seem best to them."† The "other matters" mentioned above were, I suppose, private petitions to the king's council in parliament, which had been frequently despatched after a dissolution. For in the statute which establishes this commission, 21 R. II., c. 16, no powers are committed but those of examining petitions which, if it does not confirm the charge afterward alleged against Richard of falsifying the parliament roll, must at least be considered as limiting and explaining the terms of the latter. Such a trust had been committed to some lords of the council eight years before, in very peaceful times; and it was even requested that the same might be done in future parliaments.* But it is obvious what a latitude this gave to a prevailing faction. These eighteen commissioners, or some of them (for there were who disliked the turn of affairs), usurped the full rights of the legislature, which undoubtedly were only delegated in respect of business already commenced.† They imposed a perpetual oath on prelates and lords for all time to come, to be taken before obtaining livery of their lands, that they would maintain the statutes and ordinances made by this parliament, or "afterward by the lords and knights having power committed to them by the same." They declared it high treason to disobey their ordinances. They annulled the patents of the dukes of Hereford and Norfolk, and adjudged Henry Bowet, the former's chaplain, who had advised him to petition for his inheritance, to the penalties of treason.‡ And thus, having ob-

mons author of the life of Richard II., published by Hearne, was surrounded by the king's troops, p. 133.

* Rot. Parl., 21 R. II., p. 347. † Id., p. 369.

* Rot. Parl., 13 R. II., p. 256.

† This proceeding was made one of the articles of charge against Richard in the following terms: Item, in parliamento ultimo celebrato apud Salopiam, idem Rex proponens opprimere populum suum procuravit subtiliter et fecit concedi, quod potestas parliamenti de consensu omnium statuum regni sui remaneret apud quasdam certas personas ad terminandum, dissoluto parliamento, certas petitiones in eodem parliamento porrectas protunc minimè expeditas. Cujus concessionis colore personæ sic deputatæ processerunt ad alia generaliter parliamentum illud tangentia: et hoc de voluntate regis; in derogationem status parliamenti, et in magnum incommodum totius regni et perniciosum exemplum. Et ut super factis eorum hujusmodi aliquem colorem et auctoritatem viderentur habere, rex fecit rotulos parliamenti pro voto suo mutari et deleri, contra effectum concessionis prædictæ.—Rot. Parl., 1 H. IV., vol. iii., p. 18. Whether the last accusation, of altering the parliamentary roll, be true or not, there is enough left in it to prove every thing I have asserted in the text. From this it is sufficiently manifest how unfairly Carte and Hume have drawn a parallel between this self deputed legislative commission, and that appointed by parliament to reform the administration eleven years before.

‡ Rot. Parl., 1 H. IV., vol. iii., p. 383.

ained a revenue for life, and the power of parliament being notoriously usurped by a knot of his creatures, the king was little likely to meet his people again, and became as truly absolute as his ambition could require.

It had been necessary for this purpose to subjugate the ancient nobility. For the English constitution gave them such paramount rights, that it was impossible either to make them surrender their country's freedom, or to destroy it without their consent. But several of the chief men had fallen, or were involved, with the party of Glocester. Two who, having once belonged to it, had lately plunged into the depths of infamy to ruin their former friends, were still perfectly obnoxious to the king, who never forgave their original sin. These two, Henry of Bolingbroke, earl of Derby, and Mowbray, earl of Nottingham, now dukes of Hereford and Norfolk, the most powerful of the remaining nobility, were, by a singular conjuncture, thrown, as it were, at the king's feet. Of the political mysteries which this reign affords, none is more inexplicable than the quarrel of these peers. In the parliament at Shrewsbury in 1398, Hereford was called upon by the king to relate what had passed between the Duke of Norfolk and himself in slander of his majesty. He detailed a pretty long and not improbable conversation, in which Norfolk had asserted the king's intention of destroying them both, for their old offence in impeaching his ministers. Norfolk had only to deny the charge, and throw his gauntlet at the accuser. It was referred to the eighteen commissioners who sat after the dissolution, and a trial by combat was awarded. But when this, after many delays, was about to take place at Coventry, Richard interfered, and settled the dispute by condemning Hereford to banishment for ten years, and Norfolk for life. This strange determination, which treated both as guilty where only one could be so, seems to admit no other solution than the king's desire to rid himself of two peers whom he feared and hated at a blow. But it is difficult to understand by what means he drew the crafty Bolingbroke into his snare.*

Quarrel of the dukes of Hereford and Norfolk.

However this might have been, he now threw away all appearance of moderate government. The indignities he had suffered in the eleventh year of his reign were still at his heart, a desire to revenge which seems to have been the main spring of his conduct. Though a general pardon of those proceedings had been granted, not only at the time, but in his own last parliament, he made use of them as a pretence to extort money from seventeen counties, to whom he imputed a share in the rebellion. He compelled men to confess, under their seals, that they had been guilty of treason, and to give blank obligations, which his officers filled up with large sums.* Upon the death of the Duke of Lancaster, who had passively complied throughout all these transactions, Richard refused livery of his inheritance to Hereford, whose exile implied no crime, and who had letters patent enabling him to make his attorney for that purpose during its continuance. In short, his government for nearly two years was altogether tyrannical; and, upon the same principles that cost James II. his throne, it was unquestionably far more necessary, unless our fathers would have abandoned all thought of liberty, to expel Richard II. Far be it from us to extenuate the treachery of the Percies towards this unhappy prince, or the cruel circumstances of his death, or in any way to extol either his successor or the chief men of that time, most of whom were ambitious and faithless: but after such long experience of the king's arbitrary, dissembling, and revengeful temper, I see no other safe course in the actual state of the constitution than what the nation concurred in pursuing.

Necessity for deposing him.

The reign of Richard II. is, in a constitutional light, the most interesting part of our earlier history, and it has been the most imperfectly written. Some have misrepresented the truth through prejudice, and others through carelessness. It is only to be understood, and indeed there are great difficulties in the way of understanding it at all, by a perusal of the rolls of parliament, with some assistance from the contemporary histo-

* Besides the contemporary historians, we may add a full narrative of these proceedings in the rolls of parliament, vol. iii., p. 382. It appears that Mowbray was the most offending party; since, independently of Hereford's accusation, he is charged with openly maintaining the appeals made in the false parliament of the eleventh of the king. But the banishment of his accuser was wholly unjustifiable by any motives that we can discover. It is strange that Carte should express surprise at the sentence upon the Duke of Norfolk, while he seems to consider that upon Hereford as very equitable. But he viewed the whole of this reign, and of those that ensued, with the jaundiced eye of Jacobitism.

* Rot. Parl., 1 H. IV., p. 420, 426. Walsingham, p. 353, 357. Otterburn, p. 199. Vita Ric. II., p. 74.

rians, Walsingham, Knyghton, the anonymous biographer published by Hearne, and Froissart. These, I must remark, except occasionally the last, are extremely hostile to Richard; and although we are far from being bound to acquiesce in their opinions, it is at least unwarrantable in modern writers to sprinkle their margins with references to such authority in support of positions decidedly opposite.*

Circumstances attending Henry IV.'s accession.

The revolution which elevated Henry IV. to the throne was certainly so far accomplished by force, that the king was in captivity, and those who might still adhere to him in no condition to support his authority. But the sincere concurrence which most of the prelates and nobility, with the mass of the people, gave to changes that could not have been otherwise effected by one so unprovided with foreign support as Henry, proves this revolution to have been, if not an indispensable, yet a national act, and should prevent our considering the Lancastrian kings as usurpers of the throne. Nothing indeed looks so much like usurpation in the whole transaction as Henry's remarkable challenge of the crown, insinuating, though not avowing, as Hume has justly animadverted upon it, a false and ridiculous title by right line of descent, a. ne equally unwarrantable by conquest. The course of proceedings is worthy of notice. As the renunciation of Richard might well pass for the effect of compulsion, there was a strong reason for propping up its instability by a solemn deposition from the throne, founded upon specific charges of misgovernment. Again, as the right of dethroning a monarch was nowhere found in the law, it was equally requisite to support this assumption of power by an actual abdication. But as neither one nor the other filled the Duke of Lancaster's wishes, who was not contented with owing a crown to election, nor seemed altogether to account for the exclusion of the house of March, he devised this claim, which was preferred in the vacancy of the throne, Richard's cession having been read and approved in parliament, and the sentence of deposition, "out of abundant caution, and to remove all scruple," solemnly passed by seven commissioners appointed out of the several estates. "After which challenge and claim," says the record, "the lords spiritual and temporal, and all the estates there present, being asked separately and together what they thought of the said challenge and claim, the said estates, with the whole people, without any difficulty or delay, consented that the said duke should reign over them."* The claim of Henry, as opposed to that of the Earl of March, was indeed ridiculous; but it is by no means evident that, in such cases of extreme urgency as leave no security for the common weal but the deposition of a reigning prince, there rests any positive obligation upon the estates of the realm to fill his place with the nearest heir. A revolution of this kind seems rather to defeat and confound all prior titles, though in the new settlement it will commonly be prudent, as well as equitable, to treat them with some regard. Were this otherwise, it would be hard to say why William III. reigned to the exclusion of Anne, or even of the Pretender, who had surely committed no offence at that time; or why (if such indeed be the true construction of the Act of Settlement) the more distant branches of the royal stock, descendants of Henry VII. and earlier kings, have been cut off from their hope of succession by the restriction to the heirs of the Princess Sophia.

In this revolution of 1399 there was as remarkable an attention shown to the formalities of the constitution, allowance made for the men and the times, as in that of 1688. The parliament was not opened by commission; no one took the office of president; the commons did not adjourn to their own chamber; they chose no speaker; the name of parliament was not taken, but that only of estates of the realm. But as it would have been a violation of constitutional principles to assume a parliamentary character without the king's commission, though summoned by his writ, so it was still more essential to limit their exercise of power to the necessity of circumstances. Upon the cession of the king, as upon his death, the parliament was no more; its existence, as the council of the sovereign, being dependant upon his will. The actual convention summoned by the writs of Richard could not legally become the parliament of Henry; and the validity of a statute declaring it to be such would

* It is fair to observe, that Froissart's testimony makes most in favour of the king, or rather against his enemies, where it is most valuable, that is, in his account of what he heard in the English court in 1395, l. iv., c. 62, where he gives a very different character of the Duke of Gloucester. In general, this writer is ill informed of English affairs, and undeserving to be quoted as an authority.

* Rot. Parl., p. 423

probably have been questionable in that age, when the power of statutes to alter the original principles of the common law was by no means so thoroughly recognised as at the Restoration and Revolution. Yet Henry was too well pleased with his friends to part with them so readily; and he had much to effect before the fervour of their spirits should abate. Hence an expedient was devised of issuing writs for a new parliament, returnable in six days. These neither were nor could be complied with; but the same members as had deposed Richard sat in the new parliament, which was regularly opened by Henry's commissioner, as if they had been duly elected.* In this contrivance, more than in all the rest, we may trace the hand of lawyers.

Retrospect of the progress of the constitution under Richard II.

If we look back from the accession of Henry IV. to that of his predecessor, the constitutional authority of the house of commons will be perceived to have made surprising progress during the course of twenty-two years. Of the three capital points in contest while Edward reigned, that money could not be levied, or laws enacted, without the commons' consent, and that the administration of government was subject to their inspection and control, the first was absolutely decided in their favour, the second was at least perfectly admitted in principle, and the last was confirmed by frequent exercise. The commons had acquired two additional engines of immense efficiency; one, the right of directing the application of subsidies, and calling accountants before them; the other, that of impeaching the king's ministers for misconduct. All these vigorous shoots of liberty throve more and more under the three kings of the house of Lancaster, and drew such strength and nourishment from the generous heart of England, that in after times and in a less prosperous season, though checked and obstructed in their growth, neither the blasts of arbitrary power could break them off, nor the mildew of servile opinion cause them to wither. I shall trace the progress of parliament till the civil wars of York and Lancaster; 1, in maintaining the exclusive right of taxation; 2, in directing and checking the public expenditure; 3, in making supplies depend on the redress of grievances; 4, in securing the people against illegal ordinances and interpolations of the statutes; 5, in controlling the royal administration; 6, in punishing bad ministers; and lastly, in establishing their own immunities and privileges.

Its advances under the house of Lancaster.

1. The pretence of levying money without consent of parliament expired with Edward III., who had asserted it, as we have seen, in the very last year of his reign. A great council of lords and prelates, summoned in the second year of his successor, declared that they could advise no remedy for the king's necessities, without laying taxes on the people, which could only be granted in parliament.* Nor was Richard ever accused of illegal tallages, the frequent theme of remonstrance under Edward, unless we may conjecture that this charge is implied in an act (11 R. II., c. 9), which annuls all impositions on wool and leather, without consent of parliament, *if any there be*.† Doubtless his innocence in this respect was the effect of weakness; and if the revolution of 1399 had not put an end to his newly-acquired despotism, this, like every other right of his people, would have been swept away. A less palpable means of evading the consent of the commons was by the extortion of loans, and harassing those who refused to pay by summonses before the council. These loans, the frequent resource of arbitrary sovereigns in later times, are first complained of in an early parliament of Richard II.; and a petition is granted that no man shall be compelled to lend the king money.‡ But how little this was regarded we may infer from a writ directed in 1386 to some persons in Boston, enjoining them to assess every person who had goods and chattels to the amount of twenty pounds, in his proportion of two hundred pounds, which the town had promised to lend the king; and giving an assurance that this shall be deducted from the next subsidy to be granted by parliament. Among other extraordinary parts of this letter is a menace of forfeiting life, limbs, and property, held out against such as should not obey these commissioners.§ After his triumph over

* If proof could be required of any thing so self-evident as that these assemblies consisted of exactly the same persons, it may be found in their writs of expenses, as published by Prynne, 4th Register, p. 450.

* 2 R. II., p. 56.

† It is positively laid down by the assertors of civil liberty in the great case of impositions (Howell's State Trials, vol. ii., p. 443, 507), that no precedents for arbitrary taxation of exports or imports occur from the accession of Richard II. to the reign of Mary.

‡ 2 R. II., p. 62. This did not find its way to the statute book.

§ Rymer, t. vii., p. 544.

the popular party towards the end of his reign, he obtained large sums in this way.

Under the Lancastrian kings, there is much less appearance of raising money in an unparliamentary course. Henry IV. obtained an aid from a great council in the year 1400; but they did not pretend to charge any besides themselves; though it seems that some towns afterward gave the king a contribution * A few years afterward, he directs the sheriffs to call on the richest men in their counties to advance the money voted by parliament. This, if any compulsion was threatened, is an instance of overstrained prerogative, though consonant to the practice of the late reign.† There is, however, an instance of very arbitrary conduct with respect to a grant of money in the minority of Henry VI. A subsidy had been granted by parliament upon goods imported, under certain restrictions in favour of the merchants, with a provision, that if these conditions be not observed on the king's part, then the grant should be void and of no effect.‡ But an entry is made on the roll of the next parliament, that "whereas some disputes have arisen about the grant of the last subsidy; it is declared by the Duke of Bedford and other lords in parliament, with advice of the judges and others learned in the law, that the said subsidy was at all events to be collected and levied for the king's use; notwithstanding any conditions in the grant of the said subsidy contained."§ The commons, however, in making the grant of a fresh subsidy in this parliament, renewed their former conditions, with the addition of another, that "it ne no part thereof be beset ne dispensed to no other use, but only in and for the defense of the said roialme."‖

2. The right of granting supplies would have been very incomplete, had it not been accompanied with that of directing their application. This principle of appropriating public moneys began, as we have seen, in the minority of Richard; and was among the best fruits of that period. It was steadily maintained under the new dynasty The parliament of 6 H. IV. granted two fifteenths and two tenths, with a tax on skins and wool, on condition that it should be expended in the defence of the kingdom, and not otherwise, as Thomas Lord Furnival and Sir John Pelham, ordained treasurers of war for this parliament, to receive the said subsidies, shall account and answer to the commons at the next parliament. These treasurers were sworn in parliament to execute their trust.* A similar precaution was adopted in the next session.†

Appropriation of supplies.

3. The commons made a bold attempt in the second year of Henry IV. to give the strongest security to their claims of redress, by inverting the usual course of parliamentary proceedings. It was usual to answer their petitions on the last day of the session, which put an end to all further discussion upon them, and prevented their making the redress of grievances a necessary condition of supply. They now requested that an answer might be given before they made their grant of subsidy. This was one of the articles which Richard II.'s judges had declared it high treason to attempt. Henry was not inclined to make a concession which would virtually have removed the chief impediment to the ascendency of parliament. He first said that he would consult with the lords, and answer according to their advice. On the last day of the session the commons were informed, that "it had never been known, in the time of his ancestors, that they should have their petitions answered before they had done all their business in parliament, whether of granting money or any other concern; wherefore the king will not alter the good customs and usages of ancient times."‡

Attempt to make supply depend on redress of grievances.

Notwithstanding the just views these parliaments appear generally to have entertained of their power over the public purse, that of the third of Henry V. followed a precedent from the worst times of Richard II., by granting the king a subsidy on wool and leather during his life.§ This, an historian tells us, Henry IV. had vainly laboured to obtain;‖ but the taking of Harfleur intoxicated the English with new dreams of conquest in France, which their good sense and constitutional jealousy were not firm enough to resist. The continued expenses of the war, however, prevented this grant from becoming so dangerous as it might have been in a season of tranquillity. Henry

* Carte, vol. ii., p. 640. Sir M. Hale observes that he finds no complaints of illegal impositions under the kings of the house of Lancaster.—Hargrave's Tracts, vol i., p. 184.
† Rymer, t. viii., p. 412, 488.
‡ Rot. Parl. vol. iv., p. 216.
§ Id., p. 30 ‖ Id., p. 302

* Rot. Parl., vol. iii., p. 546.
† Id., p. 568. ‡ Id., p. 453.
Id., vol. iv., p. 63. ‖ Walsingham, p 379

V., like his father, convoked parliament almost in every year of his reign.

4. It had long been out of all question, that the legislature consisted of the king, lords, and commons; or, in stricter language, that the king could not make or repeal statutes without the consent of parliament. But this fundamental maxim was still frequently defeated by various acts of evasion or violence; which, though protested against as illegal, it was a difficult task to prevent. The king sometimes exerted a power of suspending the observance of statutes; as in the ninth of Richard II., when a petition that all statutes might be confirmed is granted with an exception as to one passed in the last parliament, forbidding the judges to take fees, or give counsel in cases where the king was a party; which, because it was too severe, and needs declaration, the king would have of no effect till it should be declared in parliament."* The apprehension of this dispensing prerogative and sense of its illegality are manifested by the wary terms wherein the commons, in one of Richard's parliaments, "assent that the king made such sufferance respecting the statute of provisors as shall seem reasonable to him, so that the said statute be not repealed; and moreover that the commons may disagree thereto at the next parliament, and resort to the statute;" with a protestation that this assent, which is a novelty, and never done before, shall not be drawn into precedent; praying the king that this protestation may be entered on the roll of parliament.† A petition in one of Henry IV.'s parliaments, to limit the number of attorneys, and forbid filazers and prothonotaries from practising, having been answered favourably as to the first point, we find a marginal entry in the roll that the prince and council had respited the execution of this act.‡

Legislative rights of the commons established.

The dispensing power, as exercised in favour of individuals, is quite of a different character from this general suspension of statutes, but indirectly weakens the sovereignty of the legislature. This power was exerted, and even recognised, throughout all the reigns of the Plantagenets. In the first of Henry V. the commons pray, that the statute for driving aliens out of the kingdom be executed. The king assents, saving his prerogative, and his right of dispensing with it when he pleased. To which the commons replied, that their intention was never otherwise, nor, by God's help, ever should be. At the same time one Rees ap Thomas petitions the king to modify or dispense with the statute prohibiting Welshmen from purchasing lands in England, or the English towns in Wales, which the king grants. In the same parliament the commons pray that no grant or protection be made to any one in contravention of the statute of provisors, saving the king's prerogative. He merely answers, "Let the statutes be observed:" evading any allusion to his dispensing power.*

Dispensing power of the crown

It has been observed under the reign of Edward III., that the practice of leaving statutes to be drawn up by the judges, from the petition and answer jointly, after a dissolution of parliament, presented an opportunity of falsifying the intention of the legislature, whereof advantage was often taken. Some very remarkable instances of this fraud occurred in the succeeding reigns.

An ordinance was put upon the roll of parliament, in the fifth of Richard II., empowering sheriffs of counties to arrest preachers of heresy and their abetters, and detain them in prison until they should justify themselves before the church. This was introduced into the statutes of the year; but the assent of lords and commons is not expressed. In the next parliament, the commons, reciting this ordinance, declare that it was never assented to or granted by them, but what had been proposed in this matter was without their concurrence (that is, as I conceive, had been rejected by them), and pray that this statute be annulled, for it was never their intent to bind themselves or their descendants to the bishops more than their ancestors had been bound in times past. The king returned an answer agreeing to this petition. Nevertheless the pretended statute was untouched, and remains still among our laws:† unrepealed, except

* Walsingham, p. 210. Ruffhead observes in the margin upon this statute 8 R. II., c. 3, that it is repealed, but does not take notice what sort of repeal it had.

† 15 R. II., p. 285. See too 16 R. II., p. 301, where the same power is renewed in H. IV.'s parliaments. ‡ 13 H. IV., p. 643.

* Rot. Parl., v. 4 H. V., p. 6, 9.

† 5 R. II., stat. 2, c. 5; Rot. Parl., 6 R. II., p. 141. Some other instances of the commons attempting to prevent these unfair practices are adduced by Ruffhead in his preface to the Statutes, and in Prynne's preface to Cotton's Abridgment of the Records. The act 13 R. II., stat. 1, c. 15, that the king's castles and jails which had been separated from the body of the adjoining counties should be reunited to them, is not founded upon

by desuetude, and by inference from the acts of much later times.

This commendable reluctance of the commons to let the clergy forge chains for them produced, as there is much appearance, a similar violation of their legislative rights in the next reign. The statute against heresy in the second of Henry IV. is not grounded upon any petition of the commons, but only upon one of the clergy. It is said to be enacted by consent of the lords, but no notice is taken of the lower house in the parliament roll, though the statute reciting the petition asserts the commons to have joined in it.* The petition and the statute are both in Latin, which is unusual in the laws of this time. In a subsequent petition of the commons, this act is styled "the statute made in the second year of your majesty's reign, at the request of the prelates and clergy of your kingdom;" which affords a presumption that it had no regular assent of parliament.† And the spirit of the commons during this whole reign being remarkably hostile to the church, it would have been hardly possible to obtain their consent to so penal a law against heresy. Several of their petitions seem designed indirectly to weaken its efficacy.‡

These infringements of their most essential right were resisted by the commons in various ways, according to the measure of their power. In the fifth of Richard II., they request the lords to let them see a certain ordinance before it is engrossed.§ At another time they procured some of their own members, as well as peers, to be present at engrossing the roll. At length they spoke out unequivocally in a memorable petition, which, besides its intrinsic importance, is deserving of notice as the earliest instance in which the house of commons adopted the English language. I shall present its venerable orthography without change.

"Oure soverain lord, youre humble and trewe lieges that ben come for the comune of youre lond bysechyn onto youre rizt riztwesnesse, That so as hit hath ever be thair libte and fredom, that thar sholde no statut no lawe be made offlasse than they yaf therto their assent: consideringe that the comune of youre lond, the whiche that is, and ever hath be, a membre of youre parlemente, ben as well assenters as peticioners, that fro this tyme foreward, by compleynte of the comune of any myschief axknyge remedie by mouthe of their speker for the comune, other ellys by petition writen, that ther never be no lawe made theruppon, and engrossed as statut and lawe, nother by addicions, nother by diminucions, by no manner of terme ne termes, the whiche that sholde chaunge the sentence, and the entente axked by the speker mouthe, or the petitions beforesaid yeven up yn writyng by the manere forsaid, withoute assent of the forsaid comune. Consideringe oure soverain lord, that it is not in no wyse the entente of youre comunes, zif yet be so that they axke you by spekyng, or by writyng, two thynges or three, or as manye as theym lust: But that ever it stande in the fredom of youre hie regalie, to graunte whiche of thoo that you lust, and to werune the remanent.

"The kyng of his grace especial graunteth that fro hensforth nothyng be enacted to the peticions of his comune, that be contrarie of hir askyng, wharby they shuld be bounde withoute their assent. Savyng alwey to our liege lord his real prerogatif, to graunte and denye what him lust of their petitions and askynges aforesaide."*

Notwithstanding the fulness of this assent to so important a petition, we find no vestige of either among the statutes, and the whole transaction is unnoticed by those historians who have not looked into our original records. If the compilers of the statute-roll were able to keep out of it the very provision that was intended to check their fraudulent machinations, it was in vain to hope for redress without altering the established practice in this respect; and, indeed, where there was no design to falsify the roll, it was

any petition that appears on the roll; and probably by making search other instances equally flagrant might be discovered.

* There had been, however, a petition of the commons on the same subject, expressed in very general terms, on which this terrible superstructure might artfully be raised, p. 474.

† P. 626.

‡ We find a remarkable petition in 8 H. IV., professedly aimed against the Lollards, but intended, as I strongly suspect, in their favour. It condemns persons preaching against the Catholic faith or sacraments to imprisonment till the next parliament, where they were to abide such judgment as should be rendered *by the king and peers of the realm.* This seems to supersede the burning statute of 2 H. IV., and the spiritual cognizance of heresy.—Rot. Parl., p. 583. See too p. 626. The petition was expressly granted; but the clergy, I suppose, prevented its appearing on the statute-roll.

§ Rot. Parl., vol. iii., p. 102.

* Rot. Parl., vol. iv., p. 22. It is curious that the authors of the Parliamentary history say that the roll of this parliament is lost, and consequently suppress altogether this important petition. Instead of which they give, as their fashion is, impertinent speeches out of Holinshed, which are certainly not genuine, and would be of no value if they were so.

impossible to draw up statutes which should be in truth the acts of the whole legislature, so long as the king continued to grant petitions in part, and to ingraft new matter upon them. Such was still the case, till the commons hit upon an effectual expedient for screening themselves against these encroachments, which has lasted without alteration to the present day. This was the introduction of complete statutes, under the name of bills, instead of the old petitions; and these, containing the royal assent, and the whole form of a law, it became, though not quite immediately,* a constant principle, that the king must admit or reject them without qualification. This alteration, which wrought an extraordinary effect on the character of our constitution, was gradually introduced in Henry VI.'s reign.†

From the first years of Henry V., though not, I think, earlier, the commons began to concern themselves with the petitions of individuals to the lords or council. The nature of the jurisdiction exercised by the latter will be treated more fully hereafter. It is only necessary to mention in this place, that many of the requests preferred to them were such as could not be granted without transcending the boundaries of law. A just inquietude as to the encroachments of the king's council had long been manifested by the commons; and, finding remonstrances ineffectual, they took measures for preventing such usurpations of legislative power, by introducing their own consent to private petitions. These were now presented by the hands of the commons, and in very many instances passed in the form of statutes with the express assent of all parts of the legislature. Such was the origin of private bills, which occupy the greater part of the rolls in Henry V. and VI.'s parliament. The commons once made an ineffectual endeavour to have their consent to all petitions presented to the council in parliament rendered necessary by law; if I rightly apprehend the meaning of the roll in this place, which seems obscure or corrupt.*

Interference of parliament with the royal expenditure.

5. If the strength of the commons had lain merely in the weakness of the crown, it might be inferred that such harassing interference with the administration of affairs, as the youthful and frivolous Richard was compelled to endure, would have been sternly repelled by his experienced successor. But, on the contrary, the spirit of Richard might have rejoiced to see that his mortal enemy suffered as hard usage at the hands of parliament as himself. After a few years, the government of Henry became extremely unpopular. Perhaps his dissension with the great family of Percy, which had placed him on the throne, and was regarded with partiality by the people,† chiefly contributed to this alienation of their attachment. The commons requested, in the fifth of his reign, that certain persons might be removed from the court; the lords concurred in displacing four of these, one being the king's confessor. Henry came down to parliament and excused these four persons, as knowing no special cause why they should be removed; yet, well understanding that what the lords and commons should ordain would be for his and his kingdom's interest, and therefore anxious to conform himself to their wishes, consented to the said ordinance, and charged the persons in question to leave his palace adding that he would do as much by any other about his person whom he should find to have incurred the ill affection of his people.‡ It was in the same session that the Archbishop of Canterbury was commanded to declare before the lords

* Henry VI. and Edward IV. in some cases passed bills with sundry provisions annexed by themselves. Thus the act for resumption of grants, 4 E. IV., was encumbered with 289 clauses in favour of so many persons whom the king meant to exempt from its operation; and the same was done in other acts of the same description.—Rot. Parl., vol. v., p. 517.

† The variations of each statute, as now printed, from the parliamentary roll, whether in form or substance, are noticed in Cotton's Abridgment. It may be worth while to consult the preface to Ruffhead's edition of the Statutes, where this subject is treated at some length.

Perhaps the triple division of our legislature may be dated from this innovation. For as it is impossible to deny that, while the king promulgated a statute founded upon a mere petition, he was himself the real legislator, so I think it is equally fair to assert, notwithstanding the formal preamble of our statutes, that laws brought into either house of parliament in a perfect shape, and receiving first the assent of lords and commons, and finally that of the king, who has no power to modify them, must be deemed to proceed, and derive their efficacy, from the joint concurrence of all the three. It is said indeed at a much earlier time, that le ley de la terre est fait en parlement par le roi, et les seigneurs espirituels et temporels, et tout la communauté du royaume.—Rot. Parl., vol. iii., p. 293. But this I must allow was in the violent session of 11 Ric II., the constitutional authority of which is not to be highly prized.

* 8 H. V., vol. iv., p. 127.

† The house of commons thanked the king for pardoning Northumberland, whom, as it proved, he had just cause to suspect.—5 H. IV., p. 525.

‡ 5 H. IV., p. 595.

the king's intentions respecting his administration; allowing that some things had been done amiss in his court and household; and, therefore, wishing to conform to the will of God and laws of the land, protested that he would let in future no letters of signet or privy seal go in disturbance of law, beseeched the lords to put his household in order, so that every one might be paid, and declared that the money granted by the commons for the war should be received by treasurers appointed in parliament, and disbursed by them for no other purpose, unless in case of rebellion. At the request of the commons, he named the members of his privy council; and did the same, with some variation of persons, two years afterward. These, though not nominated with the express consent, seem to have had the approbation of the commons; for a subsidy is granted in 7 H. IV., among other causes, for "the great trust that the commons have in the lords lately chosen, and ordained to be of the king's continual council, that there shall be better management than heretofore."*

In the sixth year of Henry, the parliament, which Sir E. Coke derides as unlearned, because lawyers were excluded from it, proceeded to a resumption of grants, and a prohibition of alienating the ancient inheritance of the crown without consent of parliament: in order to ease the commons of taxes, and that the king might live on his own.† This was a favourite, though rather chimerical project. In a later parliament, it was requested that the king would take his council's advice how to keep within his own revenue. He answered that he would willingly comply, as soon as it should be in his power.‡

But no parliament came near, in the number and boldness of its demands, to that held in the eighth year of Henry IV. The commons presented thirty-one articles, none of which the king ventured to refuse, though pressing very severely upon his prerogative. He was to name sixteen counsellors, by whose advice he was solely to be guided, none of them to be dismissed without conviction of misdemeanor. The chancellor and privy seal to pass no grants or other matter, contrary to law. Any persons about the court stirring up the king or queen's minds against their subjects and duly convicted thereof, to lose their offices and be fined. The king's ordinary revenue was wholly appropriated to his household and the payment of his debts; no grant of wardship or other profit to be made thereout nor any forfeiture to be pardoned. The king, "considering the wise governmen of other Christian princes, and conforming himself thereto," was to assign two days in the week for petitions, "it being an honourable and necessary thing, that his lieges who desired to petition him should be heard." No judicial officer, nor any in the revenue or household, to enjoy his place for life or term of years. No petition to be presented to the king by any of his household at times when the council were not sitting. The council to determine nothing cognizable at common law, unless for a reasonable cause and with consent of the judges The statutes regulating purveyance were affirmed; abuses of various kinds in the council and in courts of justice enumerated and forbidden; elections of knights for counties put under regulation. The council and officers of state were sworn to observe the common law, and all statutes, those especially just enacted.*

It must strike every reader that these provisions were of themselves a noble fabric of constitutional liberty, and hardly perhaps inferior to the petition of right under Charles I. We cannot account for the submission of Henry to conditions far more derogatory than ever were imposed on Richard, because the secret politics of his reign are very imperfectly understood. Towards its close he manifested more vigour. The speaker, Sir Thomas Chaucer, having made the usual petition for liberty of speech, the king answered that he might speak as others had done in the time of his (Henry's) ancestors and his own, but not otherwise; for he would by no means have any innovation, but be as much at his liberty as any of his ancestors had ever been. Some time after he sent a message to the commons, complaining of a law passed at the last parliament, infringing his liberty and prerogative, which he requested their consent to repeal. To this the commons agreed, and received the king's thanks, who declared at the same time that he would keep as much freedom and prerogative as any of his ancestors. It does not appear what was the particular subject of complaint; but there had been much of the same remonstrating spirit in the last parliament, that was manifested on preceding occasions. The commons, however, for reasons we cannot explain, were rather dismayed. Before their dissolution they petition the king, that, whereas he was

* Rot. Parl., v. iii., p. 529, 568, 573.
† Id. p 547. ‡ 13 H. IV., p 624.

* Rot. Parl., 8 H. IV., p 585

reported to be offended at some of his subjects in this and in the preceding parliament, he would openly declare that he held them all for loyal subjects. Henry granted this "of his special grace;" and thus concluded his reign more triumphantly with respect to his domestic battles than he had gone through it.*

Power deemed to be ill gotten is naturally precarious; and the instance of Henry IV. has been well quoted to prove that public liberty flourishes with a bad title in the sovereign. None of our kings seem to have been less beloved; and indeed he had little claim to affection. But what men denied to the reigning king, they poured in full measure upon the heir of his throne. The virtues of the Prince of Wales are almost invidiously eulogized by those parliaments who treat harshly his father;† and these records afford a strong presumption that some early petulance or riot has been much exaggerated by the vulgar minds of our chroniclers. One can scarcely understand at least, that a prince, who was three years engaged in quelling the dangerous insurrection of Glendour, and who, in the latter time of his father's reign, presided at the council, was so lost in a cloud of low debauchery as common fame represents.‡ Loved he certainly was throughout his life, as so intrepid, affable, and generous a temper well deserved; and this sentiment was heightened to admiration by successes still more rapid and dazzling than those of Edward III. During his reign there scarcely appears any vestige of dissatisfaction in parliament; a circumstance very honourable, whether we ascribe it to the justice of his administration, or to the affection of his people. Perhaps two exceptions, though they are rather one in spirit, might be made: the first, a petition to the Duke of Glocester, then holding parliament as guardian of England, that he would move the king and queen to return, as speedily as might please them, in relief and comfort of the commons;§ the second, a request that their petitions might not be sent to the king beyond sea, but altogether determined "within this kingdom of England during this parliament;" and that this ordinance might be of force in all future parliaments to be held in England.‖ This

Henry V. his popularity.

* 13 H. IV., p. 648, 658.

† Rot. Parl., vol. iii., p. 549, 568, 574, 611.

‡ This passage was written before I was aware that the same opinion had been elaborately maintained by Mr. Luders, in one of his valuable essays upon points of constitutional history.

§ 8 H. V., vol. iv., p. 125 ‖ Id. ibid., p 128.

prayer, to which the guardian declined to accede, evidently sprang from the apprehensions, excited in their minds by the treaty of Troyes, that England might become a province of the French crown, which led them to obtain a renewal of the statute of Edward III., declaring the independence of this kingdom.*

It has been seen already, that even Edward III. consulted his parliament upon the expediency of negotiations for peace; though at that time the commons had not acquired boldness enough to tender their advice. In Richard II.'s reign they answered to a similar proposition with a little more confidence, that the dangers each way were so considerable they dared not decide, though an honourable peace would be the greatest comfort they could have; and concluded by hoping that the king would not engage to do homage for Calais or the conquered country.† The parliament of the tenth of his reign was expressly summoned in order to advise concerning the king's intended expedition beyond sea; a great council, which had previously been assembled at Oxford, having declared their incompetence to consent to this measure without the advice of parliament.‡ Ye a few years afterward, on a similar reference, the commons rather declined to give any opinion.§ They confirmed the league of Henry V. with the Emperor Sigismund.‖ And the treaty of Troyes which was so fundamentally to change the situation of Henry and his successors, obtained, as it evidently required, the sanction of both houses of parliament.¶ These precedents conspiring with the weakness of the executive government, in the minority of Henry VI., to fling an increase of influence into the scale of the commons, they made their concurrence necessary to all important business, both of a foreign and domestic nature. Thus commissioners were appointed to treat of the deliverance of the King of Scots, the dutchesses of Bedford and Glocester were made denizens, and mediators were appointed to reconcile the dukes of Glocester and Burgundy, by authority of the three estates assembled in parliament.** Leave was given to the dukes of Bedford and Glocester, and others in the king's behalf, to treat of peace with France, by both houses of parliament, in

Parliament consulted on all public affairs.

* 8 H. V., vol. iv., p. 130.

† 7 R. II., vol. iii., p. 170. ‡ Id. ibid., p. 215

§ 17 R. II., p. 315.

‖ 4 H. V., vol. iv., p. 98. ¶ Id. ibid., p. 135

** Rot. Parl., vol. iv., p. 211, 242, 277.

pursuance of an article in the treaty of Troyes, that no treaty should be set on foot with the dauphin without consent of the three estates of both realms.* This article was afterward repealed.†

Some complaints are made by the commons, even during the first years of Henry's minority, that the king's subjects underwent arbitrary imprisonment, and were vexed by summonses before the council, and by the newly-invented writ of subpœna out of chancery.‡ But these are not so common as formerly; and, so far as the rolls lead us to any inference, there was less injustice committed by the government under Henry VI. and his father than at any former period. Wastefulness indeed might justly be imputed to the regency, who had scandalously lavished the king's revenue.§ This ultimately led to an act for resuming all grants since his accession, founded upon a public declaration of the great officers of the crown, that his debts amounted to £372,000, and the annual expense of the household to £24,000, while the ordinary revenue was not more than £5000.‖

6. But before this time the sky had begun to darken, and discontent with the actual administration pervaded every rank. The causes of this are familiar; the unpopularity of the king's marriage with Margaret of Anjou, and her impolitic violence in the conduct of affairs, particularly the imputed murder of the people's favourite, the Duke of Glocester. This provoked an attack upon her own creature, the Duke of Suffolk. Impeachment had lain still, like a sword in the scabbard, since the accession of Henry IV.; when the commons, though not preferring formal articles of accusation, had petitioned the king that Justice Rickhill, who had been employed to take the Duke of Glocester's confession at Calais, and the lords appellants of Richard II.'s last parliament, should be put on their defence before the lords.* In Suffolk's case the commons seem to have proceeded by bill of attainder, or at least to have designed the judgment against that minister to be the act of the whole legislature. For they delivered a bill containing articles against him to the lords, with a request that they would pray the king's majesty to enact that bill in parliament, and that the said duke might be proceeded against upon the said articles in parliament according to the law and custom of England. These articles contained charges of high treason; chiefly relating to his conduct in France, which, whether treasonable or not, seems to have been grossly against the honour and advantage of the crown. At a later day, the commons presented many other articles of misdemeanor. To the former he made a defence, in presence of the king as well as the lords, both spiritual and temporal; and indeed the articles of impeachment were directly addressed to the king, which gave him a reasonable pretext to interfere in the judgment. But, from apprehension, as it is said, that Suffolk could not escape conviction upon at least some part of these charges, Henry anticipated with no slight irregularity the course of legal trial; and summoning the peers into a private chamber, informed the Duke of Suffolk, by mouth of his chancellor, that, inasmuch as he had not put himself upon his peerage, but submitted wholly to the royal pleasure, the king, acquitting him of the first articles containing matter of treason, by his own advice, and not that of the lords, nor by way of judgment, not being in a place where judgment could be delivered, banished him for five years from his dominions. The lords then present besought the king to let their protest appear on record, that neither they nor their posterity might lose their rights of peerage by this precedent. It was justly considered as an arbitrary stretch of prerogative, in order to defeat the privileges of parliament, and screen a favourite minister from punishment. But the course of proceeding by bill of attainder, instead of regular impeachment, was not judiciously chosen by the commons.†

Impeachments of ministers.

7. Privilege of parliament, an extensive and singular branch of our constitutional law, begins to attract attention under the Lancastrian princes. It is true indeed, that we can trace long before the records, and may infer with

Privilege of Parliament.

* Rot. Parl., vol. iv., p. 371.

† 23 H. VI., vol. v., p. 102. There is rather a curious instance in 3 H. VI., of the jealousy with which the commons regarded any proceedings in parliament, where they were not concerned. A controversy arose between the earls marshal and of Warwick respecting their precedence; founded upon the royal blood of the first, and long possession of the second. In this the commons could not affect to interfere judicially; but they found a singular way of meddling, by petitioning the king to confer the dukedom of Norfolk on the earl marshal, vol. iv., p. 273.

‡ Rot. Parl., 1 H. VI., p. 189. 3 H. VI. p. 292. 8 H. VI., p. 343

§ Id., vol. v., 18 H. VI., p. 17

‖ Id. ibid., 28 H. VI., p. 185

* Rot. Parl., vol. iii., p. 430, 449

† 28 H. VI., vol. v., p. 176

probability as to times whose records have not survived, one considerable immunity, a freedom from arrest for persons transacting the king's business in his national council.* Several authorities may be found in Mr. Hatsell's precedents; of which one, in the 9th of Edward II., is conclusive.† But in those rude times, members of parliament were not always respected by the officers executing legal process, and still less by the violators of law. After several remonstrances, which the crown had evaded,‡ the commons obtained the statute 11 H. VI., c. 11, for the punishment of such as assault any on their way to the parliament, giving double damages to the party.§ They had more difficulty in establishing, notwithstanding the old precedents in their favour, an immunity from all criminal process, except in charges of treason, felony, and breach of the peace, which is their present measure of privilege. The truth was, that with a right pretty clearly recognised, as is admitted by the judges in Thorp's case, the house of commons had no regular compulsory process at their command. In the cases of Lark, servant of a member, in the 8th of Henry VI.,‖ and of Clerke, himself a burgess, in the 39th of the same king,¶ it was thought necessary to effect their release from a civil execution by special acts of parliament. The commons, in a former instance, endeavoured to make the law general, that no members nor their servants might be taken, except for treason, felony, and breach of peace; but the king put a negative upon this part of their petition.

The most celebrated, however, of these early cases of privilege is that of Thomas Thorp, speaker of the commons in 31 H. VI. This person, who was moreover a baron of the exchequer, had been imprisoned on an execution at suit of the Duke of York. The commons sent some of their members to complain of a violation of privilege to the king and lords in parliament, and to demand Thorp's release. It was alleged by the Duke of York's council, that the trespass done by Thorp was since the beginning of the parliament, and the judgment thereon given in time of vacation, and not during the sitting. The lords referred the question to the judges, who said, after deliberation, that "they ought not to answer to that question, for it hath not be used aforetyme, that the judges should in any wise determine the privilege of this high court of parliament; for it is so high and so mighty in his nature, that it may make law, and that that is law it may make no law; and the determination and knowledge of that privilege belongeth to the lords of the parliament, and not to the justices." They went on, however, after observing that a general writ of supersedeas of all processes upon ground of privilege had not been known, to say, that, "if any person that is a member of this high court of parliament be arrested in such cases as be not for treason or felony, or surety of the peace, or for a condemnation had before the parliament, it is used that all such persons should be released of such arrests and make an attorney, so that they may have their freedom and liberty, freely to intend upon the parliament."

Notwithstanding this answer of the judges, it was concluded by the lords that Thorp should remain in prison, without regarding the alleged privilege; and the commons were directed in the king's name to proceed "with all goodly haste and speed" to the election of a new speaker. It is curious to observe, that the commons, forgetting their grievances, or content to drop them, made such haste and speed according to this command, that they presented a new speaker for approbation the next day.*

This case, as has been strongly said, was begotten by the iniquity of the times. The state was verging fast towards civil war: and Thorp, who afterward distinguished himself for the Lancastrian cause, was an inveterate enemy of the Duke of York. That prince seems to have been swayed a little from his usual temper in procuring so unwarrantable a determination. In the reign of Edward IV., the commons claimed privilege against any civil suit during the time of their session; but they had recourse, as before, to a particular act of parliament to obtain a writ of supersedeas in favour of one Atwell, a member, who had been sued

* If this were to rest upon antiquity of precedent, one might be produced that would challenge all competition. In the laws of Ethelbert, the first Christian king of Kent, at the end of the sixth century, we find this provision: "If the king call his people to him (i. e. in the wittenagemot), and any one does an injury to one of them, let him pay a fine."—Wilkins, Leges Anglo-Saxon., p. 2.

† Hatsell, vol. i., p. 12.

‡ Rot. Parl., 5 H. IV., p. 541.

§ The clergy had got a little precedence in this. An act passed 8 H. VI., c. 1, granting privilege from arrest for themselves and servants on their way to convocation.

‖ Rot. Parl., vol. iv., p. 357.

¶ Id., vol. v., p. 374.

* Rot. Parl., vol. v., p. 239. Hatsell's Precedents, p 29

The present law of privilege seems not to have been fully established, or at least effectually maintained, before the reign of Henry VIII.*

No privilege of the commons can be so fundamental as liberty of speech. This is claimed at the opening of every parliament by their speaker, and could never be infringed without shaking the ramparts of the constitution. Richard II.'s attack upon Haxey has been already mentioned as a flagrant evidence of his despotic intentions. No other case occurs until the 33d year of Henry VI., when Thomas Young, member for Bristol, complained to the commons, that, "for matters by him shewed in the house accustomed for the commons in the said parliaments, he was therefore taken, arrested, and rigorously in open wise led to the Tower of London, and there grievously in great duress long time imprisoned against the said freedom and liberty," with much more to the like effect. The commons transmitted this petition to the lords, and the king "willed that the lords of his council do and provide for the said suppliant, as in their discretion shall be thought convenient and reasonable." This imprisonment of Young, however, had happened six years before, in consequence of a motion made by him, that the king then having no issue, the Duke of York might be declared heir-apparent to the crown. In the present session, when the duke was protector, he thought it well-timed to prefer his claim to remuneration.†

There is a remarkable precedent in the 9th of Henry IV., and perhaps the earliest authority for two eminent maxims of parliamentary law; that the commons possess an exclusive right of originating money bills, and that the king ought not to take notice of matters pending in parliament. A quarrel broke out between the two houses upon this ground; and as we have not before seen the commons venture to clash openly with their superiors, the circumstance is for this additional reason worthy of attention. As it has been little noticed, I shall translate the whole record.

"Friday, the second day of December, which was the last day of the parliament, the commons came before the king and the lords in parliament, and there, by command of the king a schedule of indemnity touching a certain altercation moved between the lords and commons was read; and on this it was commanded by our said lord the king, that the said schedule should be entered of record in the roll of parliament; of which schedule the tenour is as follows: be it remembered, that on Monday, the 21st day of November, the king our sovereign lord being in the council-chamber in the abbey of Glocester,* the lords spiritual and temporal for this present parliament assembled being then in his presence, a debate took place among them about the state of the kingdom, and its defence to resist the malice of the enemies who on every side prepare to molest the said kingdom and its faithful subjects, and how no man can resist this malice, unless, for the safeguard and defence of his said kingdom, our sovereign lord the king has some notable aid and subsidy granted to him in his present parliament. And therefore it was demanded of the said lords by way of question, what aid would be sufficient and requisite in these circumstances? To which question it was answered by the said lords severally, that, considering the necessity of the king on one side, and the poverty of his people on the other, no less aid could be sufficient than one tenth and a half from cities and towns, and one fifteenth and a half from all other lay persons; and besides, to grant a continuance of the subsidy on wool, woolfells, and leather, and of three shillings on the tun (of wine), and twelve pence on the pound (of other merchandise), from Michaelmas next ensuing for two years thenceforth. Whereupon, by command of our said lord the king, a message was sent to the commons of this parliament, to cause a certain number of their body to come before our said lord the king and the lords, in order to hear and report to their companions what they should be commanded by our said lord the king. And upon this the said commons sent into the presence of our said lord the king and the said lords twelve of their companions; to whom, by command of our said lord the king, the said question was declared, with the answer by the said lords severally given to it. Which answer it was the pleasure of our said lord the king, that they should report to the rest of their fellows, to the end that they might take the shortest course to comply with the intention of the said lords. Which

* Upon this subject the reader should have recourse to Hatsell's Precedents, vol. i., chap. i.

† Rot. Parl., vol v., p. 337. W. Worcester, p. 475. Mr. Hatsel. seems to have overlooked this case, for he mentions that of Strickland, in 1571, as the earliest instance of the crown's interference with freedom of speech in parliament, vol. i., p 85.

* This parliament sat at Glocester.

report being thus made to the said commons, they were greatly disturbed at it, saying and asserting it to be much to the prejudice and derogation of their liberties. And after that our said lord the king had heard this, not willing that any thing should be done at present, or in time to come, that might anywise turn against the liberty of the estate, for which they are come to parliament, nor against the liberties of the said lords, wills, and grants, and declares, by the advice and consent of the said lords, as follows; to wit, that it shall be lawful for the lords to debate together in this present parliament, and in every other for time to come, in the king's absence, concerning the condition of the kingdom, and the remedies necessary for it. And in like manner it shall be lawful for the commons, on their part, to debate together concerning the said condition and remedies. Provided always, that neither the lords on their part, nor the commons on theirs, do make any report to our said lord the king of any grant granted by the commons, and agreed to by the lords, nor of the communications of the said grant, before that the said lords and commons are of one accord and agreement in this matter, and then in manner and form accustomed, that is to say, by the mouth of the speaker of the said commons for the time being, to the end that the said lords and commons may have what they desire (avoir puissent leur gree) of our said lord the king. Our said lord the king willing, moreover, by the consent of the said lords, that the communication had in this present parliament as above be not drawn into precedent in time to come, nor be turned to the prejudice or derogation of the liberty of the estate, for which the said commons are now come, neither in this present parliament, nor in any other time to come. But wills that himself, and all the other estates, should be as free as they were before. Also, the said last day of parliament, the said speaker prayed our said lord the king on the part of the said commons, that he would grant the said commons, that they should depart in as great liberty as other commons had done before. To which the king answered, that this pleased him well, and that at all times it had been his desire."*

Every attentive reader will discover this remarkable passage to illustrate several points of constitutional law. For hence it may be perceived: first, that the king was used in those times to be present at debates of the lords, personally advising with them upon the public business; which also appears by many other passages on record; and this practice, I conceive, is not abolished by the king's present declaration, save as to grants of money, which ought to be of the free-will of parliament, and without that fear or influence which the presence of so high a person might create: secondly, that it was already the established law of parliament, that the lords should consent to the commons' grant, and not the commons to the lords; since it is the inversion of this order whereof the commons complain, and it is said expressly that grants are made by the commons, and agreed by the lords: thirdly, that the lower house of parliament is not, in proper language, an estate of the realm, but rather the image and representative of the commons of England; who, being the third estate, with the nobility and clergy, make up and constitute the people of this kingdom and liege subjects of the crown.*

* Rot. Parl., v. iii., p. 611

* A notion is entertained by many people, and not without the authority of some very respectable names, that the king is one of the three estates of the realm, the lords spiritual and temporal forming together the second, as the commons in parliament do the third. This is contradicted by the general tenour of our ancient records and lawbooks; and indeed the analogy of other governments ought to have the greatest weight, even if more reason for doubt appeared upon the face of our own authorities. But the instances where the three estates are declared or implied to be the nobility, clergy, and commons, or at least their representatives in parliament, are too numerous for insertion. This land standeth, says the Chancellor Stillington, in 7th Edward IV., by three states, and above that one principal, that is, to wit, lords spiritual, lords temporal, and commons, and over that, state royal, as our sovereign lord the king.—Rot. Parl., vol. v., p. 622. Thus too it is declared that the treaty of Staples in 1492 was to be confirmed per tres status regni Angliæ ritè et debitè convocatos, videlicet per prelatos et clerum, nobiles et communitates eiusdem regni.—Rymer, t. xii., p. 508.

I will not, however, suppress one passage, and the only instance that has occurred in my reading, where the king does appear to have been reckoned among the three estates. The commons say, in the 2d of Henry IV., that the states of the realm may be compared to a trinity, that is, the king, the lords spiritual and temporal, and the commons.—Rot. Parl., vol. iii., p. 459. In this expression, however, the sense shows, that by estates of the realm they meant members, or necessary parts of the parliament.

Whitelocke, on the Parliamentary Writ, vol. ii., p. 43, argues at length, that the three estates are king, lords, and commons, which seems to have been a current doctrine among the popular lawyers of the seventeenth century. His reasoning is chiefly grounded on the baronial tenure of bishops, the validity of acts passed against their consent

At the next meeting of parliament, in allusion probably to this disagreement between the houses, the king told them, that the states of parliament were come together for the common profit of the king and kingdom, and for unanimity's sake and general consent; and therefore he was sure the commons would not attempt nor say any thing but what should be fitting and conducive to unanimity; commanding them to meet together, and communicate for the public service.*

It was not only in money bills that the originating power was supposed to reside in the commons. The course of proceedings in parliament, as has been seen, from the commencement at least of Edward III.'s reign, was that the commons presented petitions, which the lords by themselves, or with the assistance of the council, having duly considered, the sanction of the king was notified or withheld. This was so much according to usage, that, on one occasion, when the commons requested the advice of the other house on a matter before them, it was answered, that the ancient custom and form of parliament had ever been for the commons to report their own opinion to the king and lords, and not to the contrary; and the king would have the ancient and laudable usages of parliament maintained.† It is singular that, in the terror of innovation, the lords did not discover how materially this usage of parliament took off from their own legislative influence. The rule, however, was not observed in succeeding times; bills originated indiscriminately in either house; and indeed some acts of Henry V., which do not appear to be grounded on any petition, may be suspected, from the manner of their insertion in the rolls of parliament, to have been proposed on the king's part to the commons.* But there is one manifest instance in the 18th of Henry VI., where the king requested the commons to give their authority to such regulations† as his council might have provided for redressing the abuse of purveyance; to which they assented.

If we are to choose constitutional precedents from seasons of tranquillity rather than disturbance, which surely is the only means of preserving justice or con-

and other arguments of the same kind; which might go to prove that there are only at present two estates, but can never turn the king into one.

The source of this error is an inattention to the primary sense of the word estate (status), which means an order or condition into which men are classed by the institutions of society. It is only in a secondary, or rather an elliptical application, that it can be referred to their representatives in parliament or national councils. The lords temporal, indeed, of England are identical with the estate of the nobility; but the house of commons is not, strictly speaking, the estate of commonalty, to which its members belong, and from which they are deputed. So the whole body of the clergy are properly speaking one of the estates, and are described as such in the older authorities, 21 Ric. II., Rot. Parl., v. iii., p. 348, though latterly the lords spiritual in parliament acquired, with less correctness, that appellation.—Hody on Convocations, p 426. The bishops, indeed, may be said constructively to represent the whole of the clergy, with whose grievances they are supposed to be best acquainted, and whose rights it is their peculiar duty to defend. And I do not find that the inferior clergy had any other representation in the cortes of Castile and Aragon, where the ecclesiastical order was always counted among the estates of the realm.

* P 623. † Rot. Parl., 5 R. II., p. 100.

* Stat. 2 H. V., c. 6, 7, 8, 9. 4 H. VI., c. 7.

† Rot. Parl., vol. v., p. 7. It appears by a case in the year-book of the thirty-third of Henry VI., that, where the lords made only some minor alterations in a bill sent up to them from the commons even if it related to a grant of money, the custom was not to remand it for their assent to the amendment.—Brooke's Abridgment: Parliament. 4. The passage is worth extracting, in order to illustrate the course of proceeding in parliament at that time. Case fuit que Sir J. P. fuit attaint de certeyn trespas par acte de parliament, dont les commons furent assentus, que sil ne vient eins per tiel jour que il forfeytera tiel summe, et les seigneurs done plus longe jour, et le bil nient rebaile al commons arrere; et per Kirby, clerk des roles del parliament, l'use del parliament est, que si bil vient primes a les commons, et ils passent ceo, il est use d'endorser ceo en tiel forme; Soit bayle as seigniors; et si les seigniors *ne le roy* ne alteront le bil, donques est use a liverer ceo al clerke del parliament destre enrol saunz endorser ceo ... Et si les scigniors volent alter un bil in ceo que poet estoye ore le bil, ils poyent saunz remandre ceo al commons, come si les commons graunte poundage pur quatuor ans, et les grantent nisi par deux ans, ceo ne serra rebavle al commons; mes si les commons grauntent nisi pur deux ans, et les seigneurs pur quatre ans, la ceo serra reliver al commons, et en cest case les seigniors doyent faire un sedule de lour intent, ou d'endorser le bil en ceste forme, Les seigneurs ceo assentent pur durer par quatuor ans; et quant les commons ount le bil arrere, et ne volent assenter a ceo, ceo ne poet estre un actre, mes si les commons volent assenter, donques ils indorse leur respons sur le mergent ne basse deins le bil en tiel forme, Les commons sont assentans al sedul des seigniors, a mesme cesty bil annexe, et donques sera bayle ad clerke del parliament, ut supra. Et si un bil soit primes liver al seigniors, et le bil passe cux, ils ne usont de fayre ascun endorsement, mess de mitter le bil as commons, et donques si le bil passe les commons, il est use destre issint endorce, Les commons sont assentants, et ceo prove que il ad passe les seigniors devant, et lour assent est a cest passer del seigniors; et ideo cest acte supra nest bon, pur ceo quc ne fuit rebaile as commons.

A singular assertion is made in the year-book 21 E. IV., p. 48 (Maynard's edit.), that a subsidy granted by the commons without assent of the peers is good enough. This cannot surely have been law at that time

sistency, but little intrinsic authority can be given to the following declaration of parliamentary law in the 11th of Richard II. "In this parliament (the roll says) all the lords as well spiritual and temporal there present, claimed as their liberty and privilege, that the great matters moved in this parliament, and to be moved in other parliaments for time to come, touching the peers of the land, should be treated, adjudged, and debated according to the course of parliament, and not by the civil law, nor the common law of the land, used in the other lower courts of the kingdom; which claim, liberty, and privileges, the king graciously allowed and granted them in full parliament."* It should be remembered that this assertion of paramount privilege was made in very irregular times, when the king was at the mercy of the Duke of Glocester and his associates, and that it had a view to the immediate object of justifying their violent proceedings against the opposite party, and taking away the restraint of the common law. It stands as a dangerous rock to be avoided, not a lighthouse to guide us along the channel. The law of parliament, as determined by regular custom, is incorporated into our constitution; but not so as to warrant an indefinite, uncontrollable assumption of power in any case, least of all in judicial procedure, where the form and the essence of justice are inseparable from each other. And, in fact, this claim of the lords, whatever gloss Sir E. Coke may put upon it, was never intended to bear any relation to the privileges of the lower house. I should not perhaps have noticed this passage so strongly if it had not been made the basis of extravagant assertions as to the privileges of parliament;† the spirit of which exaggerations might not be ill adapted to the times wherein Sir E. Coke lived, though I think they produced at several later periods no slight mischief, some consequences of which we may still have to experience.

Contested elections now determined.

The want of all judicial authority, either to issue process or to examine witnesses, together with the usual shortness of sessions, deprived the house of commons of what is now considered one of its most fundamental privileges, the cognizance of disputed elections. Upon a false return by the sheriff, there was no remedy but through the king or his council. Six instances only, I believe, occur during the reigns of the Plantagenet family, wherein the misconduct or mistake of the sheriff is recorded to have called for a specific animadversion, though it was frequently the ground of general complaint, and even of some statutes. The first is in the 12th of Edward II., when a petition was presented to the council against a false return for the county of Devon, the petitioner having been duly elected. It was referred to the court of exchequer to summon the sheriff before them.* The next occurs in the 36th of E. III., when a writ was directed to the sheriff of Lancashire, after the dissolution of parliament, to inquire at the county-court into the validity of the election; and upon his neglect, a second writ issued to the justices of the peace to satisfy themselves about this in the best manner they could, and report the truth into chancery. This inquiry after the dissolution was on account of the wages for attendance, to which the knights unduly returned could have no pretence.† We find a third case in the 7th of Richard II., when the king took notice that Thomas de Camoys, who was summoned by writ to the house of peers, had been elected knight for Surry, and directed the sheriff to return another.‡ In the same year, the town of Shaftsbury petitioned the king, lords, and commons against a false return of the sheriff of Dorset, and prayed them to order remedy. Nothing further appears respecting this petition.◊ This is the first instance of the commons being noticed in matters of election. But the next case is more material: in the 5th of Henry IV., the commons prayed the king and lords in parliament, that because the writ of summons to parliament was not sufficiently returned by the sheriff of Rutland, this matter might be examined in parliament, and in case of default found therein, an exemplary punishment might be inflicted; whereupon the lords sent for the sheriff and Oneby, the knight returned, as well as for Thorp, who had been duly elected, and having examined into the facts of the case, directed the return to be amended, by the insertion of Thorp's name, and committed the sheriff to the Fleet, till he should pay a fine at the king's pleasure.‖ The last passage that I can produce is from the roll of 18 H VI., where "it is considered by the king with the advice and assent of the lords

* Rot. Parl. vol. iii., p. 244.
† Coke's 4th Institute, p. 15.

* Glanvil's Reports of Elections, edit. 1774. Introduction, p. 12. † 4 Prynne, p. 261
‡ Glanvil's Reports, ibid., from Prynne
◊ Id. ibid.
‖ Ibid., and Rot. Parl., vol. iii., p. 530

spiritual and temporal," that whereas no knights have been returned for Cambridgeshire, the sheriff shall be directed, by another writ, to hold a court and to proceed to an election, proclaiming that no person shall come armed, nor any tumultuous proceeding take place; something of which sort appears to have obstructed the execution of the first writ. It is to be noticed that the commons are not so much as named in this entry.* But several provisions were made by statute under the Lancastrian kings, when seats in parliament became much more an object of competition than before, to check the partiality of the sheriffs in making undue returns. One act (11 H. IV., c. 1) gives the justices of assize power to inquire into this matter, and inflicts a penalty of one hundred pounds on the sheriff. Another (6 H. VI., c. 4) mitigates the rigour of the former, so far as to permit the sheriff or the knights returned by him to traverse the inquests before the justices; that is, to be heard in their own defence, which, it seems, had not been permitted to them. Another (23 H. VI., c. 14) gives an additional penalty upon false returns to the party aggrieved. These statutes conspire with many other testimonies to manifest the rising importance of the house of commons, and the eagerness with which gentlemen of landed estates (whatever might be the case in petty boroughs) sought for a share in the national representation.

In whom the right of voting for knights resided.

Whoever may have been the original voters for county representatives, the first statute that regulates their election, so far from limiting the privilege to tenants in capite, appears to place it upon a very large and democratical foundation. For (as I rather conceive, though not without much hesitation), not only all freeholders, but all persons whatever present at the county-court, were declared or rendered capable of voting for the knight of their shire. Such at least seems to be the inference from the expressions of 7 H. IV., c. 15. "all who are there present, as well suiters duly summoned for that cause as others."† And this acquires some degree of confirmation from the later statute, 8 H. VI., c. 7, which, reciting that "elections of knights of shires have now of late been made by very great, outrageous, and excessive number of people dwelling within the same counties, of the which most part was people of small substance and of no value," confines the elective franchise to freeholders of lands or tenements to the value of forty shillings.

The representation of towns in parliament was founded upon two principles; of consent to public burdens and of advice in public measures, especially such as related to trade and shipping. Upon both these accounts it was natural for the kings who first summoned them to parliament, little foreseeing that such half-emancipated burghers would ever clip the loftiest plumes of their prerogative, to make these assemblies numerous, and summon members from every town of consideration in the kingdom. Thus the writ of 23 E. I. directs the sheriffs to cause deputies to be elected to a general council from every city, borough, and trading town And although the last words are omitted in subsequent writs, yet their spirit was preserved; many towns having constantly returned members to parliament by regular summonses from the sheriffs, which were no chartered boroughs, nor had apparently any other claim than their populousness or commerce. These are now called boroughs by prescription.*

Elections of Burgesses.

* Rot. Parl., vol. v., p. 7.

† 3 Prynne's Register, p. 187. This hypothesis, though embraced by Prynne, is, I confess, much opposed to general opinion; and a very respectable living writer treats such an interpretation of the statute 7 H. IV. as chimerical. The words cited in the text "as others," mean only, according to him, suiters not duly summoned.—Heywood on Elections, vol. i., p. 20. But, as I presume, the summons to freeholders was by general proclamation; so that it is not easy to perceive what difference there could be between summoned and unsummoned suiters. And if the words are supposed to glance at the private summonses to a few friends, by means of which the sheriffs were accustomed to procure a clandestine election, one can hardly imagine that such persons would be styled "duly summoned." It is not unlikely, however, that these large expressions were inadvertently used and that they led to that inundation of voters without property, which rendered the subsequent act of Henry VI. necessary. That of Henry IV. had itself been occasioned by an opposite evil, the close election of knights by a few persons in the name of the county.

Yet the consequence of the statute of Henry IV was not to let in too many voters, or to render elections tumultuous, in the largest of English counties, whatever it might be in others. Prynne has published some singular sheriffs' indentures for the county of York, all during the interval between the acts of Henry IV. and Henry VI., which are sealed by a few persons calling themselves the attorneys of some peers and ladies, who, as far as appears, had solely returned the knights of that shire.—3 Prynne, p. 152. What degree of weight these anomalous returns ought to possess, I leave to the reader.

* The majority of prescriptive boroughs have prescriptive corporations which carry the legal which is not always the moral presumptio

Besides these respectable towns, there were some of a less eminent figure, which had writs directed to them as ancient demesnes of the crown. During times of arbitrary taxation, the crown had set tallages alike upon its chartered boroughs and upon its tenants in demesne. When parliamentary consent became indispensable, the free tenants in ancient demesne, or rather such of them as inhabited some particular vills, were called to parliament among the other representatives of the commons. They are usually specified distinctly from the other classes of representatives in grants of subsidies throughout the parliaments of the two first Edwards, till, about the beginning of the Third's reign, they were confounded with ordinary burgesses.* This is the foundation of that particular species of elective franchise incident to what we denominate burgage tenure; which, however, is not confined to the ancient demesne of the crown.†

The proper constituents therefore of the citizens and burgesses in parliament appear to have been—1. All chartered boroughs, whether they derived their privileges from the crown or from a mesne lord, as several in Cornwall did from Richard, king of the Romans;‡ 2. All towns which were the ancient or the actual demesne of the crown; 3. All considerable places, though unincorporated, which could afford to defray the expenses of their representatives, and had a notable interest in the public welfare. But no parliament ever perfectly corresponded with this theory. The writ was addressed in general terms to the sheriff, requiring him to cause two knights to be elected out of the body of the county, two citizens from every city, and two burgesses from every borough. It rested altogether upon him to determine what towns should exercise this franchise; and it is really incredible, with all the carelessness and ignorance of those times, what frauds the sheriffs ventured to commit in executing this trust. Though parliaments met almost every year, and there could be no mistake in so notorious a fact, it was the continual practice of sheriffs to omit boroughs that had been in recent habit of electing members, and to return upon the writ that there were no more within their county Thus, in the 12th of Edward III., the sheriff of Wiltshire, after returning two citizens for Salisbury, and burgesses for two boroughs, concludes with these words: "There are no other cities or boroughs within my bailiwick." Yet in fact eight other towns had sent members to preceding parliaments. So in the 6th of Edward II., the sheriff of Bucks declared that he had no borough within his county except Wycomb; though Wendover, Agmondesham, and Marlow had twice made returns since that king's accession.* And from this cause alone it has happened that many towns called boroughs, and having a charter and constitution as such, have never returned members to parliament; some of which are now among the most considerable in England, as Leeds, Birmingham, and Macclesfield.†

Power of the sheriff to omit boroughs

It has been suggested, indeed, by Brady,‡ that these returns may not appear so false and collusive if we suppose the sheriff to mean only that there were no resident burgesses within these boroughs fit to be returned, or that the expense of their wages would be too heavy for the place to support. And no doubt the latter plea, whether implied or not in the return, was very frequently an inducement to the sheriffs to spare the smaller bor-

original charter. But "many boroughs and towns in England have burgesses by prescription, that never were incorporated."—Ch. J. Hobart in Dungannon Case, Hobart's Reports, p. 15. And Mr. Luders thinks, I know not how justly, that in the age of Edward I., which is most to our immediate purpose, "there were not perhaps thirty corporations in the kingdom."—Reports of Elections, vol. i., p. 98. But I must allow that, in the opinion of many sound lawyers, the representation of unchartered, or at least unincorporated boroughs, was rather a *real* privilege, and founded upon tenure, than one arising out of their share in public contributions. —Ch. J. Holt in Ashby v. White, 2 Ld. Raymond, 951. Heywood on Borough Elections, p. 11. This inquiry is very obscure; and perhaps the more so, because the learning directed towards it has more frequently been that of advocates pleading for their clients than of unbiased antiquaries. If this be kept in view, the lover of constitutional history will find much information in several of the reported cases on controverted elections; particularly those of Tewksbury and Liskeard in Peckwell's Reports, vol. i.

* Brady on Boroughs, p. 75, 90, and 163. Case of Tewksbury, in Peckwell's Reports, vol. i., p. 178.

† Littleton, s. 162, 163. Brady, p. 97.

* Brady on Boroughs, p. 110. 3 Prynne, p. 231. The latter even argues that this power of omitting ancient boroughs was legally vested in the sheriff before the 5th of Richard II., and though the language of that act implies the contrary of this position, yet it is more than probable that most of our parliamentary boroughs by prescription, especially such as were then unincorporated, are indebted for their privileges to the exercise of the sheriff's discretion; not founded on partiality, which would rather have led him to omit them, but on the broad principle that they were sufficiently opulent and important to send representatives to parliament.

† Willis, Notitia Parliamentaria, vol. i., preface p. 36.

‡ P. 117

oughs. The wages of knights were four shillings a day, levied on all freeholders, or at least on all holding by knight-service, within the county.* Those of burgesses were half that sum;† but even this pittance was raised with reluctance and difficulty from miserable burghers, little solicitous about political franchises. Poverty, indeed, seems to have been accepted as a legal excuse. In the 6th of E. II., the sheriff of Northumberland returns to the writ of summons, that all his knights are not sufficient to protect the county; and in the 1st of E. III., that they were too much ravaged by their enemies to send any members to parliament.‡ The sheriffs of Lancashire, after several returns that they had no boroughs within their county, though Wigan, Liverpool, and Preston were such, alleged at length that none ought to be called upon on account of their poverty. This return was constantly made, from 36 E. III. to the reign of Henry VI.*

Reluctance of boroughs to send members.

The elective franchise was deemed by the boroughs no privilege or blessing, but rather, during the chief part of this period, an intolerable grievance. Where they could not persuade the sheriff to omit sending his writ to them, they set it at defiance by sending no return. And this seldom failed to succeed, so that after one or two refusals to comply, which brought no punishment upon them, they were left in quiet enjoyment of their insignificance. The town of Torrington, in Devonshire, went farther, and obtained a charter of exemption from sending burgesses, grounded upon what the charter asserts to appear on the rolls of chancery, that it had never been represented before the 21st of E. III. This is absolutely false, and is a proof how little we can rely upon the veracity of records. Torrington having made not less than twenty-two returns before that time. It is curious, that in spite of this charter, the town sent members to the two ensuing parliaments, and then ceased for ever.† Richard II. gave the inhabitants of Colchester a dispensation from returning burgesses for five years, in consideration of the expenses they had incurred in fortifying the town.‡ But this immunity, from whatever reason, was not regarded, Colchester having continued to make returns as before.

The partiality of sheriffs in leaving out boroughs which were accustomed in old time to come to the parliament, was repressed, as far as law could repress it, by a statute of Richard II., which imposed a fine on them for such neglect, and upon any member of parliament who should absent himself from his duty.§ But it is, I think, highly probable, that a great part of those who were elected from the boroughs did not trouble themselves with attendance in parliament. The sheriff even found it necessary to take sureties for their execution of so burdensome a duty whose names it was usual, down to the end of the fifteenth century, to endorse upon the writ along with those of the elected.‖ This expedient is not likely to

* It is a perplexing question, whether freeholders in soccage were liable to contribute towards the wages of knights; and authorities might be produced on both sides. The more probable supposition is that they were not exempted. See the various petitions relating to the payment of wages in Prynne's fourth Register. This is not unconnected with the question as to their right of suffrage. See ante, p. 360. Freeholders within franchises made repeated endeavours to exempt themselves from payment of wages. Thus in 9 H. IV. it was settled by parliament, that, to put an end to the disputes on this subject between the people of Cambridgeshire and those of the Isle of Ely, the latter should pay 200*l.* and be quit in future of all charges on that account.—Rot. Parl., vol. iv., p. 383. By this means the inhabitants of that franchise seem to have purchased the right of suffrage, which they still enjoy, though not, I suppose, suitors to the county-court. In most other franchises, and in many cities erected into distinct counties, the same privilege of voting for knights of the shire is practically exercised; but whether this has not proceeded as much from the tendency of returning officers and of parliament to favour the right of election in doubtful cases, as from the merits of their pretensions, may be a question.

† The wages of knights and burgesses were first reduced to this certain sum by the writs De levandis expensis, 16 E. II.—Prynne's fourth Register, p. 53. These were issued at the request of those who had served after the dissolution of parliament, and included a certain number of days, according to the distance of the county whence they came, for going and returning. It appears by these that thirty-five or forty miles were reckoned a day's journey; which may correct the exaggerated notions of bad roads and tardy locomotions that are sometimes entertained.—See Prynne's fourth part, and Willis's Notitia Parliamentaria, passim.

The latest entries of writs for expenses in the close rolls are of 2 H. V.; but they may be proved to have issued much longer; and Prynne traces them to the end of Henry VIII.'s reign, p. 495. Without the formality of this writ, a very few instances of towns remunerating their burgesses for attendance in parliament are known to have occurred in later times. Andrew Marvel is commonly said to have been the last who received this honourable salary. A modern book asserts that wages were paid in some Cornish boroughs as late as the eighteenth century.—Lyson's Cornwall, preface, p. xxxii.; but the passage quoted in proof of this is not precise enough to support a unlikely a fact.

‡ 3 Prynne, p. 165.

* 4 Prynne, p. 317. † Id., p. 320.

‡ 3 Prynne, p. 241. § 5 R. II., stat. ii., c. 4

‖ Ludes's Reports, vol. i., p. 15. Sometimes an elected burgess absolutely refused to go to par

have been very successful; and the small number, comparatively speaking, of writs for expenses of members for boroughs, which have been published by Prynne, while those for the knights of shires are almost complete, leads to a strong presumption that their attendance was very defective. This statute of Richard II. produced no sensible effect.

Who the electors in boroughs were.

By what person the election of burgesses was usually made is a question of great obscurity, which is still occasionally debated before committees of parliament. It appears to have been the common practice for a very few of the principal members of the corporation to make the election in the county-court; and their names, as actual electors, are generally returned upon the writ by the sheriff.* But we cannot surely be warranted by this to infer that they acted in any other capacity than as deputies of the whole body, and indeed it is frequently expressed that they chose such and such persons by the assent of the community;† by which word, in an ancient corporate borough, it seems natural to understand the freemen participating in its general franchises, rather than the ruling body, which, in many instances at present, and always perhaps in the earliest age of corporations, derived its authority by delegation from the rest. The consent, however, of the inferior freemen we may easily believe to have been merely nominal; and from being nominal, it would in many places come by degrees not to be required at all; the corporation, specially so denominated, or municipal government, acquiring by length of usage an exclusive privilege in election of members of parliament, as they did in local administration. This, at least, appears to me a more probable hypothesis than that of Dr. Brady, who limits the original right of election in all corporate boroughs to the aldermen or other capital burgesses.‡

Members of the House of Commons.

The members of the house of commons, from this occasional disuse of ancient boroughs, as well as from the creation of new ones, underwent some fluctuation during the period subject to our review. Two hundred citizens and burgesses sat in the parliament held by Edward I. in his twenty-third year the earliest epoch of acknowledged representation. But in the reigns of Edward III. and his three successors, about ninety places, on an average, returned members, so that we may reckon this part of the commons at one hundred and eighty.* These, if regular in their duties, might appear an overbalance for the seventy-four knights who sat with them. But the dignity of ancient lineage, territorial wealth, and military character, in times when the feudal spirit was hardly extinct, and that of chivalry at its height, made these burghers veil their heads to the landed aristocracy. It is pretty manifest that the knights, though doubtless with some support from the representatives of towns, sustained the chief brunt of battle against the crown. The rule and intention of our old constitution was, that each county, city, or borough should elect deputies out of its own body, resident among themselves, and consequently acquainted with their necessities and grievances.† It would be very interesting to discover at what time, and by what degrees, the practice of election swerved from this strictness. But I have not been able to trace many steps of the transition. The number of practising lawyers who sat in parliament, of which there are several complaints, seems to afford an inference that it had begun in the reign of Edward III. Besides several petitions of the commons, that none but knights or reputable squires should be returned for shires, an ordinance was made in the forty-sixth of his reign that no lawyer practising in the king's court, nor sheriff during his shrievalty, be returned knight for a county; because these lawyers put forward many petitions in the name of the commons, which only concerned their clients.‡ This probably was truly alleged, as we may guess from the vast number of proposals for changing the course of legal process which fill the

liament, and drove his constituents to a fresh choice.—3 Prynne, p. 277.

* 3 Prynne, p. 252.

† Idem, p. 257, de assensu totius communitatis predictæ elegerunt R. W., so in several other instances quoted in the ensuing pages.

‡ Brady on Boroughs p. 132, &c.

* Willis, Notitia Parliamentaria, vol. iii., p. 96, &c. 3 Prynne, p. 224, &c.

† In 4 Edw. II., the sheriff of Rutland made this return: Eligi feci in pleno comitatu, loco duorum militum, eo quod milites non sunt in hoc comitatu commorantes, duos homines de comitatu Rutland, de discretioribus et ad laborandum potentioribus, &c.—3 Prynne, p. 170. But this deficiency of actual knights soon became very common. In 19 E. II. there were twenty-eight members returned from shires who were not knights, and but twenty-seven who were such. The former had at this time only two shillings or three shillings a day for their wages, while the real knights had four shillings.—4 Prynne, p. 53, 74. But in the next reign their wages were put on a level.

‡ Rot. Parl., vol. ii., p. 310.

rolls during this reign. It is not to be doubted, however, that many practising lawyers were men of landed estate in their respective counties.

An act in the first year of Henry V. directs that none be chosen knights, citizens, or burgesses, who are not resident within the place for which they are returned on the day of the date of the writ * This statute apparently indicates a point of time when the deviation from the line of law was frequent enough to attract notice, and yet not so established as to pass for an unavoidable irregularity It proceeded, however, from great and general causes, which new laws, in this instance, very fortunately, are utterly incompetent to withstand. There cannot be a more opposite proof of the inefficacy of human institutions to struggle against the steady course of events, than this unlucky statute of Henry V., which is almost a solitary instance in the law of England, wherein the principle of desuetude has been avowedly set up against an unrepealed enactment. I am not aware, at least, of any other, which not only the house of commons, but the court of king's bench has deemed itself at liberty to declare unfit to be observed.† Even at the time when it was enacted, the law had probably, as such, very little effect. But still the plurality of elections were made, according to ancient usage as well as statute, out of the constituent body. The contrary instances were exceptions to the rule; but exceptions increasing continually, till they subverted the rule itself. Prynne has remarked, that we chiefly find Cornish surnames among the representatives of Cornwall, and those of northern families among the returns from the north. Nor do the members for shires and towns seem to have been much interchanged; the names of the former belonging to the most ancient families, while those of the latter have a more plebeian cast.‡ In the reign of Edward IV., and not before, a very few of the burgesses bear the addition of esquire in the returns; which became universal in the middle of the succeeding century.◊

Even county elections seem in general, at least in the fourteenth century, to have been ill attended, and left to the influence of a few powerful and active persons. A petitioner against an undue return in the 12th of Edward II. complains that, whereas he had been chosen knight for Devon, by Sir William Martin, bishop of Exeter, with the consent of the county, yet the sheriff had returned another.* In several indentures of a much later date, a few persons only seem to have been concerned in the election, though the assent of the community be expressed.† These irregularities, which it would be exceedingly erroneous to convert, with Hume, into lawful customs, resulted from the abuses of the sheriff's power, which, when parliament sat only for a few weeks, with its hands full of business, were almost sure to escape with impunity. They were sometimes also countenanced, or rather instigated by the crown, which, having recovered in Edward II.'s reign the prerogative of naming the sheriffs, surrendered by an act of his father,‡ filled that office with its creatures, and constantly disregarded the statute forbidding their continuance beyond a year. Without searching for every passage that might illustrate the interference of the crown in elections, I will mention two or three leading instances. When Richard II. was meditating to overturn the famous commission of reform, he sent for some of the sheriffs, and required them to permit no knight or burgess to be elected to the next parliament without the approbation of the king and his council. The sheriffs replied, that the commons would maintain their ancient privilege of electing

Irregularity of elections.

Influence of the crown upon them.

* 1 H. V., c. 1.

† See the case of Dublin university, in the first volume of Peckwell's Reports of contested elections. Note D., p. 53. The statute itself was repealed by 14 G. III., c. 58

‡ By 23 H. VI., c. 15, none but gentlemen born, generosi a nativitate, are capable of sitting in parliament as knights of counties; an election was set aside 39 H. VI., because the person returned was not of gentle birth.—Prynne's 3d Reg., p. 161.

◊ Willis, Notitia Parliamentaria Prynne's 4th Register, p. 1184. A letter in that authentic and interesting accession to our knowledge of ancient times, the Paston collection, shows that eager canvass was sometimes made by country gentlemen in Edward IV.'s reign to represent boroughs. This letter throws light at the same time on the creation or revival of boroughs. The writer tells Sir John Paston: "If ye miss to be burgess of Malden, and my lord chamberlain will, ye may be in another place; there be a dozen towns in England that choose no burgess which ought to do it; ye may be set in for one of those towns an' ye be friended." This was in 1472, vol. ii., p. 107.

* Glanvil's Reports of Elections, edit. 1774. Introduction, p. xii.

† Prynne's 3d Register, p. 171.

‡ 28 E. I., c. 8. 9 E. II. It is said that the sheriff was elected by the people of his county in the Anglo-Saxon period; no instance of this, however, according to Lord Lyttleton, occurs after the conquest. Shrievalties were commonly sold by the Norman kings.—Hist of Henry II., vol ii., p 921.

their own representatives.* The parliament of 1397, which attainted his enemies, and left the constitution at his mercy, was chosen, as we are told, by dint of intimidation and influence.† Thus also that of Henry VI., held at Coventry in 1460, wherein the Duke of York and his party were attainted, is said to have been unduly returned by the like means. This is rendered probable by a petition presented to it by the sheriffs, praying indemnity for all which they had done in relation thereto contrary to law.‡ An act passed according to their prayer, and in confirmation of elections. A few years before, in 1455, a singular letter under the king's signet is addressed to the sheriffs, reciting that "we be enfourmed there is busy labour made in sondry wises by certaine persons for the chesyng of the said knights, ... of which labour we marvaille greatly, insomuche as it is nothing to the honour of the laborers, but ayenst their worship; it is also ayenst the lawes of the lande," with more to that effect; and enjoining the sheriffs to let elections be free and the peace kept.§ There was certainly no reason to wonder that a parliament, which was to shift the virtual sovereignty of the kingdom into the hands of one whose claims were known to extend much farther, should be the object of tolerably warm contests. Thus in the Paston letters, we find several proofs of the importance attached to parliamentary elections by the highest nobility.‖

Constitution of the House of Lords.

The house of lords, as we left it in the reign of Henry III., was entirely composed of such persons holding lands by barony as were summoned by particular writ of parliament.¶ Tenure and summons were both essential at this time in order to render any one a lord of parliament; the first by the ancient constitution of our feudal monarchy from the conquest; the second by some regulation or usage of doubtful origin, which was thoroughly established before the conclusion of Henry III.'s reign. This produced, of course, a very marked difference between the greater and the lesser, or unparliamentary barons. The tenure of the latter, however, still subsisted, and though too inconsiderable to be members of the legislature, they paid relief as barons, they might be challenged on juries, and, as I presume, by parity of reasoning, were entitled to trial by their peerage. These lower barons, or, more commonly, tenants by parcels of baronies,* may be dimly traced to the latter years of Edward III.† But many of them were successively summoned to parliament, and thus recovered the former lustre of their rank; while the rest fell gradually into the station of commoners, as tenants by simple knight-service.

Baronial tenure required for lords spiritual.

As tenure without summons did not entitle any one to the privileges of a lord of parliament, so no spiritual person at least ought to have been summoned without baronial tenure. The prior of St. James at Northampton, having been summoned in the twelfth of Edward II., was discharged upon his petition, because he held nothing of the king by barony, but only in frankalmoign. The prior of Bridlington, after frequent summonses, was finally left out, with an entry made in the roll that he held nothing of the king. The abbot of Leicester had been called to fifty parliaments: yet, in the 25th of

* Vita Ricardi II., p. 85.

† Otterbourne, p. 191. He says of the knights returned on this occasion, that they were not elected per communitatem ut mos exigit, sed per regiam voluntatem.

‡ Prynne's 2d Reg., p. 141. Rot. Parl., vol. v., p 367. § Id., p. 450.

‖ Vol. i., p. 96, 98; vol. ii., p. 99, 105; vol. ii., p 243.

¶ Upon this dry and obscure subject of inquiry, the nature and constitution of the house of lords during this period, I have been much indebted to the first part of Prynne's Register, and to West's Inquiry into the manner of creating peers; which, though written with a party motive, to serve the ministry of 1719 in the peerage bill, deserves, for the perspicuity of the method and style, to be reckoned among the best of our constitutional dissertations

* Baronies were often divided by descent among females into many parts, each retaining its character as a fractional member of a barony. The tenants in such case were said to hold of the king by the third, fourth, or twentieth part of a barony, and did service or paid relief in such proportion.

† Madox, Baronia Anglica, p. 42 and 58. West's Inquiry, p. 28, 33. That a baron could only be tried by his fellow-barons, was probably a rule as old as the trial per pais of a commoner. In 4 E. III., Sir Simon Bereford having been accused before the lords in parliament of aiding and advising Mortimer in his treasons, they declared with one voice that he was not their peer; wherefore they were not bound to judge him as a peer of the land; but inasmuch as it was notorious that he had been concerned in usurpation of royal powers and murder of the liege lord (as they styled Edward II.), the lords, as judges of parliament, by assent of the king in parliament, awarded and adjudged him to be hanged. A like sentence, with a like protestation, was passed on Mautravers and Gournay There is a very remarkable anomaly in the case of Lord Berkley, who, though undoubtedly a baron his ancestors having been summoned from the earliest date of writs, put himself on his trial in parliament by twelve knights of the county of Gloucester.—Rot. Parl., vol. ii., p. 53. Rymer, t. iv p 734

Edward III., he obtained a charter of perpetual exemption, reciting that he held no lands or tenements of the crown by barony, or any such service as bound him to attend parliaments or councils.* But great irregularities prevailed in the rolls of chancery, from which the writs to spiritual and temporal peers were taken; arising in part, perhaps, from negligence, in part from wilful perversion: so that many abbots and priors, who like these had no baronial tenure, were summoned at times and subsequently omitted, of whose actual exemption we have no record. Out of one hundred and twenty-two abbots and forty-one priors, who at some time or other sat in parliament, but twenty-five of the former and two of the latter were constantly summoned; the names of forty occur only once, and those of thirty-six others not more than five times.† Their want of baronial tenure, in all probability, prevented the repetition of writs which accident or occasion had caused to issue.‡

Barons called by writ.

The ancient temporal peers are supposed to have been intermingled with persons who held nothing of the crown by barony, but attended in parliament solely by virtue of the king's prerogative exercised in the writ of summons.§ These have been called barons by writ; and it seems to be denied by no one, that, at least under the three first Edwards, there were some of this description in parliament. But after all the labours of Dugdale and others in tracing the genealogies of our ancient aristocracy, it is a problem of much difficulty to distinguish these from the territorial barons. As the latter honours descended to female heirs, they passed into new families and new names, so that we can hardly decide of one summoned for the first time to parliament, that he did not inherit the possession of a feudal barony. Husbands of baronial heiresses were almost invariably summoned in their wives' right, though frequently by their own names. They even sat after the death of their wives, as tenants by the courtesy.* Again, as lands, though not the subject of frequent transfer, were, especially before the statute de donis, not inalienable, we cannot positively assume that all the right heirs of original barons had preserved those estates upon which their barony had depended.† If we judge, however, by the lists of those summoned, according to the best means in our power, it will appear that the regular barons by tenure were all along very far more numerous than those called by writ: and that, from the end of Edward III.'s reign, no spiritual persons, and few if any laymen, except peers created by patent, were summoned to parliament, who did not hold territorial baronies.‡

With respect to those who were indebted for their seats among the lords

* Prynne, p. 142, &c. West's Inquiry.

† Prynne, p. 141.

‡ It is worthy of observation, that the spiritual peers summoned to parliament were in general considerably more numerous than the temporal.—Prynne, p. 114. This appears, among other causes, to have saved the church from that sweeping reformation of its wealth, and perhaps of its doctrines, which the commons were thoroughly inclined to make under Richard II. and Henry IV. Thus the reduction of the spiritual lords by the dissolution of monasteries was indispensably required to bring the ecclesiastical order into due subjection to the state.

§ Perhaps it can hardly be said that the king's prerogative compelled the party summoned, not being a tenant by barony, to take his seat. But though several spiritual persons appear to have been discharged from attendance on account of their holding nothing by barony, as has been justly observed, yet there is, I believe, no istance of any layman's making such an application. The terms of the ancient writ of summons, however, in fide et *homagio* quibus nobis tenemini, afford a presumption that a feudal tenure was, in construction of law, the basis of every lord's attendance in parliament. This form was not finally changed to the present, in fide et *ligentiâ*, till the 46th of Edw. III. Prynne's 1st Register, p. 206.

* Collins's Proceedings on Claims of Baronies, p. 24 and 73.

† Prynne speaks of "the alienation of baronies by sale, gift, or marriage, after which the new purchasers were summoned instead," as if it frequently happened.—1st Register, p. 239. And several instances are mentioned in the Bergavenny case (Collins's Proceedings, p. 113), where land-baronies having been entailed by the owners on their heirs male, the heirs general have been excluded from inheriting the dignity.

It is well known, notwithstanding these ancient precedents, that the modern doctrine does not admit any right in the purchaser of a territorial peerage, such as Arundel, to a writ of summons, or consequently to any privilege as a lord of parliament. But it might be a speculative question, whether such a purchaser could not become a real though unparliamentary baron, and entitled as such to a trial by the peers. For though the king, assisted, if he please, by the advice of the house of lords, is finally and exclusively to decide upon claims to parliamentary privileges, yet the dignity of peerage, whether derived under ancient tenure or a royal patent, is vested in the possessor by act of law, whereof the ordinary courts of justice may incidentally take cognizance. See the case of R. v. Knowles, Salkeld's Reports, p. 509, the principles of which will never be controverted by any one acquainted with the original constitution of this country.

‡ Prynne's 1st Register, p. 237. This must be understood to mean that no new families were summoned; for the descendants of some who are not supposed to have held land baronies may constantly be found in later lists.

to the king's writ, there are two material questions; whether they acquired an hereditary nobility by virtue of the writ: and, if this be determined against them, whether they had a decisive, or merely a deliberative voice in the house. Now, for the first question, it seems that, if the writ of summons conferred an estate of inheritance, it must have done so either by virtue of its terms, or by established construction and precedent. But the writ contains no words by which such an estate can in law be limited; it summons the person addressed to attend in parliament in order to give his advice on the public business, but by no means implies that his advice will be required of his heirs, or even of himself, on any other occasion. The strongest expression is "vobiscum et *cæteris* prælatis, magnatibus et proceribus," which appears to place the party on a sort of level with the peers. But the word magnates and proceres are used very largely in ancient language, and, down to the time of Edward III., comprehend the king's ordinary council as well as his barons. Nor can these, at any rate, be construed to pass an inheritance, which, in the grant of a private person, much more of the king, would require express words of limitation. In a single instance, the writ of summons to Sir Henry de Bromflete (27 H. VI.), we find these remarkable words: Volumus enim vos et hæredes vestros masculos de corpore vestro legitimè exeuntes barones de Vescy existere. But this Sir Henry de Bromflete was the lineal heir of the ancient barony de Vesci.* And if it were true that the writ of summons conveyed a barony of itself, there seems no occasion to have introduced these extraordinary words of creation or revival. Indeed there is less necessity to urge these arguments from the nature of the writ, because the modern doctrine, which is entirely opposite to what has here been suggested, asserts that no one is ennobled by the mere summons, unless he has rendered it operative by taking his seat in parliament; distinguishing it in this from a patent of peerage,† which requires no act of the party for its completion. But this distinction could be supported by nothing except long usage. If, however, we recur to the practice of former times, we shall find that no less than ninety-eight laymen were summoned once only to parliament, none of their names occurring afterward; and fifty others two, three, or four times. Some were constantly summoned during their lives, none of whose posterity ever attained that honour.* The course of proceeding, therefore, previous to the accession of Henry VII., by no means warrants the doctrine which was held in the latter end of Elizabeth's reign,† and has since been too fully established by repeated precedents to be shaken by any reasoning. The foregoing observations relate to the more ancient history of our constitution, and to the plain matter of fact as to those times, without considering what political cause there might be to prevent the crown from introducing occasional counsellors into the house of lords.

Bannerets summoned to the house of lords.

It is manifest by many passages in these records, that bannerets were frequently summoned to the upper house of parliament, constituting a distinct class inferior to barons, though generally named together, and ultimately confounded with them.‡ Barons are distinguished by the appellation of Sire, bannerets have only that of Monsieur, as le Sire de Berkeley le Sire de Fitzwalter, Monsieur Richard Scrop, Monsieur Richard Stafford. In the 7th of Richard II., Thomas Camoys having been elected knight of the shire for Surrey, the king addresses a writ to the sheriff, directing him to proceed to a new election, cum hujusmodi banneretti ante hæc tempora in milites comitatus ratione alicujus parliamenti eligi minime consueverunt. Camoys was summoned by writ to the same parliament. It has been inferred from hence by Selden that he was a baron, and that the word banneret is merely synonymous.§

* West's Inquiry. Prynne, who takes rather lower ground than West, and was not aware of Sir Henry de Bromflete's descent, admits that a writ of summons to any one, naming him baron, or dominus, as Baroni de Greystoke, Domino de Furnival, did give an inheritable peerage; not so a writ generally worded, naming the party knight or esquire, unless he held by barony.

† Lord Abergavenny's case, 12 Coke's Reports; and Collins's Proceedings on claims of baronies by writ, p. 61.

* Prynne's 1st Register, p. 232. Elsynge, who strenuously contends against the writ of summons conferring an hereditary nobility, is of opinion that the party summoned was never omitted in subsequent parliaments, and consequently was a peer for life, p. 43. But more regard is due to Prynne's latter inquiries.

† Case of Willoughby, Collins, p. 8: of Dacres p. 41: of Abergavenny, p. 119. But see the case of Grey de Ruthyn, p. 222 and 230, where the contrary position is stated by Selden upon better grounds.

‡ Rot. Parl., vol. ii., p. 147, 309; vol. iii., p. 100, 386, 424; vol. iv., p. 374. Rymer, t. vii., p. 161.

§ Selden's Works, vol. iii., p. 764. Selden

But this is contradicted by too many passages. Bannerets had so far been considered as commoners some years before, that they could not be challenged on juries.* But they seem to have been more highly estimated at the date of this writ.

The distinction however between barons and bannerets died away by degrees. In the 2d of Henry VI. † Scrop of Bolton is called le Sire de Scrop; a proof that he was then reckoned among the barons. The bannerets do not often appear afterward by that appellation as members of the upper house. Bannerets, or, as they are called, banrents, are enumerated among the orders of Scottish nobility in the year 1428, when the statute directing the common lairds or tenants in capite to send representatives was enacted; and a moderate historian justly calls them an intermediate order between the peers and lairds.‡ Perhaps a consideration of these facts, which have frequently been overlooked, may tend in some measure to explain the occasional discontinuance, or sometimes the entire cessation, of writs of summons to an individual or his descendants; since we may conceive that bannerets, being of a dignity much inferior to that of barons, had no such inheritable nobility in their blood as rendered their parliamentary privileges a matter of right. But whether all those who, without any baronial tenure, received their writs of summons to parliament belonged to the order of bannerets, I cannot pretend to affirm: though some passages in the rolls might rather lead to such a supposition.

The second question relates to the right of suffrage possessed by these temporary members of the upper house. It might seem plausible certainly to conceive, that the real and ancient aristocracy would not permit their powers to be impaired by numbering the votes of such as the king might please to send among them, however they might allow them to assist in their debates. But I am much more inclined to suppose that they were in all respects on an equality with other peers during their actual attendance in parliament. For, 1. They are summoned by the same writ as the rest, and their names are confused among them in the lists; whereas the judges and ordinary counsellors are called by a separate writ, vobiscum et cæteris de consilio nostro, and their names are entered after those of the peers.* 2. Some, who do not appear to have held land-baronies, were constantly summoned from father to son and thus became hereditary lords of parliament, through a sort of prescriptive right, which probably was the foundation of extending the same privilege afterward to the descendants of all who had once been summoned. There is no evidence that the family of Scrope, for example, which was eminent under Edward III. and subsequent kings, and gave rise to two branches, the lords of Bolton and Masham, inherited any territorial honour.† 3. It is very difficult to obtain any direct proof as to the right of voting, because the rolls of parliament do not take notice of any debates; but there happens

opinion that bannerets in the lords' house were the same as barons, may seem to call on me for some contrary authorities, in order to support my own assertion, besides the passages above quoted from the rolls, of which he would naturally be supposed a more competent judge. I refer therefore to Spelman's Glossary, p. 74; Whitelocke on Parliamentary Writ, vol. i., p. 313; and Elsynge's Method of holding parliaments, p. 65.

* Puis un fut chalengé purce qu'il fut a banniere, et non allocatur, car s'il soit a banniere, et ne tient pas par baronie, il sera en l'assise.—Year-book, 22 Edw III., fol. 18, a. apud West's Inquiry, p. 22.

† Rot. Parl., vol. iv., p. 201.

‡ Pinkerton's Hist. of Scotland, vol. i., p. 357 and 365.

* West, whose business it was to represent the barons by writ as mere assistants without suffrage, cites the writ to them rather disingenuously, as if it ran vobiscum et cum prelatis, magnatibus ac proceribus, omitting the important word cæteris, p. 35. Prynne, however, from whom West has borrowed a great part of his arguments, does not seem to go the length of denying the right of suffrage to persons so summoned.—1st Register, p. 237.

† These descended from two persons, each named Geoffrey le Scrope, chief-justices of K. B. and C. B. at the beginning of Edward III.'s reign. The name of one of them is once found among the barons, but I presume this to have been an accident or mistake in the roll, as he is frequently mentioned afterward among the judges. Scrope, chief-justice of K. B., was made a *banneret* in 14 E. III. He was the father of Henry Scrope of Masham, a considerable person in Edward III. and Richard II.'s government, whose grandson, Lord Scrope of Masham, was beheaded for a conspiracy against Henry V. There was a family of Scrupe as old as the reign of Henry II.; but it is not clear, notwithstanding Dugdale's assertion, that the Scropes descended from them, or at least that they held the same lands: nor were the Scrupes barons, as appears by their paying a relief of only sixty marks for three knights' fees.—Dugdale's Baronage, p. 654.

The want of consistency in old records throws much additional difficulty over this intricate subject. Thus Scrope of Masham, though certainly a baron, and tried next year by the peers, is called Chevalier in an instrument of 1 H. V.—Rymer. ix., p. 13. So, in the endictment against Sir John Oldcastle, he is constantly styled knight, though he had been summoned several times as Lord Cobham, in right of his wife, who inherited that barony.—Rot. Parl., vol. iv., p. 107

to exist one remarkable passage, in which the suffrages of the lords are individually specified. In the first parliament of Henry IV., they were requested by the Earl of Northumberland to declare what should be done with the late King Richard. The lords then present agreed that he should be detained in safe custody; and on account of the importance of this matter, it seems to have been thought necessary to enter their names upon the roll in these words: The names of the lords concurring in their answer to the said question here follow; to wit, the Archbishop of Canterbury, and fourteen other bishops; seven abbots; the Prince of Wales, the Duke of York, and six earls; nineteen barons, styled thus: le Sire de Roos, or le Sire de Grey de Ruthyn. Thus far the entry has nothing singular; but then follow these nine names: Monsieur Henry Percy, Monsieur Richard Scrop, le Sire Fitz-hugh, le Sire de Bergeveny, le Sire de Lomley, le Baron de Greystock, le Baron de Hilton, Monsieur Thomas Erpyngham, Chamberlayn, Monsieur Mayhewe Gournay. Of these nine, five were undoubtedly barons, from whatever cause misplaced in order. Scrop was summoned by writ; but his title of Monsieur, by which he is invariably denominated, would of itself create a strong suspicion that he was no baron, and in another place we find him reckoned among the bannerets. The other three do not appear to have been summoned, their writs probably being lost. One of them, Sir Thomas Erpyngham, a statesman well known in the history of those times, is said to have been a banneret;* certainly he was not a baron. It is not unlikely that the two others, Henry Percy (Hotspur), and Gournay, an officer of the household, were also bannerets; they cannot at least be supposed to be barons, neither were they ever summoned to any subsequent parliament. Yet in the only record we possess of votes actually given in the house of lords, they appear to have been reckoned among the rest.†

Creation of peers by statute.

The next method of conferring an honour of peerage was by creation in parliament. This was adopted by Edward III. in several instances, though always, I believe, for the higher titles of duke or earl. It is laid down by lawyers, that whatever the king is said, in an ancient record, to have done in full parliament, must be taken to have proceeded from the whole legislature. As a question of fact, indeed, it might be doubted whether, in many proceedings where this expression is used, and especially in the creation of peers, the assent of the commons was specifically and deliberately given. It seems hardly consonant to the circumstances of their order under Edward III. to suppose their sanction necessary, in what seemed so little to concern their interest. Yet there is an instance, in the fortieth year of that prince, where the lords individually, and the commons with one voice, are declared to have consented, at the king's request, that the Lord de Coucy, who had married his daughter, and was already possessed of estates in England, might be raised to the dignity of an earl, whenever the king should determine what earldom he would confer upon him.* Under Richard II., the marquisate of Dublin is granted to Vere by full consent of all the estates. But this instrument, besides the unusual name of dignity, contained an extensive jurisdiction and authority over Ireland.† In the same reign Lancaster was made Duke of Guienne, and the Duke of York's son created Earl of Rutland, to hold during his father's life. The consent of the lords and commons is expressed in their patents, and they are entered upon the roll of parliament.‡ Henry V. created his brothers dukes of Bedford and Glocester, by request of the lords and commons.§ But the patent of Sir John Cornwall, in the 10th of Henry VI., declares him to be made Lord Fanhope, "by consent of the lords, in the presence of the three estates of parliament;" as if it were designed to show that the commons had not a legislative voice in the creation of peers.‖

And by patent.

The mention I have made of creating peers by act of parliament has partly anticipated the modern form of letters patent, with which the other was nearly allied. The first instance of a barony conferred by patent was in the tenth year of Richard II., when Sir John Holt, a judge of the Common Pleas, was created Lord Beauchamp of Kiddermin-ster. Holt's patent, however, passed while Richard was endeavouring to act in an arbitrary manner; and in fact he never sat in parliament, having been attainted in that of the next year by the name of Sir John Holt. In a number of subsequent patents down to the reign of Henry VII., the assent of parliament is

* Blomefield's Hist. of Norfolk, vol. iii. p. 645 (folio edit.). † Rot. Parl., v. iii., p 427.

* Rot. Parl., vol. ii., p. 290.
† Id., vol. iii., p. 209. ‡ Id., p. 263, 264.
§ Id., vol. iv., p. 17. ‖ Id., p. 401

expressed, though it frequently happens that no mention of it occurs in the parliamentary roll. And, in some instances, the roll speaks to the consent of parliament, where the patent itself is silent.*

Clergy summoned to attend parliament.

It is now perhaps scarcely known by many persons not unversed in the constitution of their country, that, besides the bishops and baronial abbots, the inferior clergy were regularly summoned at every parliament. In the writ of summons to a bishop, he is still directed to cause the dean of his cathedral church, the archdeacon of his diocess, with one proctor from the chapter of the former, and two from the body of his clergy, to attend with him at the place of meeting. This might, by an inobservant reader, be confounded with the summons to the convocation, which is composed of the same constituent parts, and, by modern usage, is made to assemble on the same day. But it may easily be distinguished by this difference; that the convocation is provincial, and summoned by the metropolitans of Canterbury and York; whereas the clause commonly denominated præmunientes (from its first word), in the writ to each bishop, proceeds from the crown, and enjoins the attendance of the clergy at the national council of parliament.†

The first unequivocal instance of representatives appearing for the lower clergy is in the year 1255, when they are expressly named by the author of the Annals of Burton.‡ They preceded, therefore, by a few years, the house of commons; but the introduction of each was founded upon the same principle. The king required the clergy's money,§ but dared not take it without their consent. In the double parliament, if so we may call it, summoned in the eleventh of Edward I. to meet at Northampton and York, and divided according to the two ecclesiastical provinces, the proctors of chapters for each province, but not those of the diocesan clergy, were summoned through a royal writ addressed to the archbishops. Upon account of the absence of any deputies from the lower clergy, these assemblies refused to grant a subsidy. The proctors of both descriptions appear to have been summoned by the præmunientes clause in the 22d, 23d, 24th, 28th, and 35th years of the same king; but in some other parliaments of his reign the præmunientes clause is omitted.* The same irregularity continued under his successor; and the constant usage of inserting this clause in the bishop's writ is dated from the twenty-eighth of Edward III.†

It is highly probable that Edward I., whose legislative mind was engaged in modelling the constitution on a comprehensive scheme, designed to render the clergy an effective branch of parliament, however their continual resistance may have defeated the accomplishment of this intention.‡ We find an entry upon the roll of his parliament at Carlisle, containing a list of all the proctors deputed to it by the several dioceses of the kingdom. This may be reckoned a clear proof of their parliamentary attendance during his reign under the præmunientes clause; since the province of Canterbury could not have been present in convocation at a city beyond its limits.§ And indeed if we were to found our judgment merely on the language used in these writs, it would be hard to resist a very strange paradox, that the clergy were not only one of the three estates of the realm, but as essential a member of the legislature by their representatives as the commons.‖ They are summoned in the ear

* West's Inquiry, p. 65. This writer does not allow that the king possessed the prerogative of creating new peers without consent of parliament. But Prynne (1st Register, p. 225), who generally adopts the same theory of peerage as West, strongly asserts the contrary; and the party views of the latter's treatise, which I mentioned above, should be kept in sight. It was his object to prove, that the pending bill to limit the members of the peerage was conformable to the original constitution.

† Hody's History of Convocations, p. 12.. Dissertatio de antiquâ et modernâ Synodi Anglicani constitutione, prefixed to Wilkins's Concilia, t. i.

‡ 2 Gale, Scriptores Rer. Anglic., t. ii., p. 355. Hody, p. 345. Atterbury (Rights of Convocations, p. 295, 315) endeavours to show that the clergy had been represented in parliament from the conquest, as well as before it. Many of the passages he quotes are very inconclusive; but possibly there may be some weight in one from Matthew Paris, ad ann. 1247, and two or three writs of the reign of Henry III.

§ Hody, p. 381. Atterbury's Rights of Convocations, p. 221.

* Hody, p. 386. Atterbury, p. 222.

† Hody, p. 391.

‡ Gilbert's Hist. of Exchequer, p. 47.

§ Rot. Parl., vol. i., p. 189. Atterbury, p. 229.

‖ The lower house of convocation, in 1547, ter rified at the progress of reformation, petitioned that, "according to the tenour of the king's writ and the ancient customs of the realm, they might have room and place, and be associated with the commons in the nether house of this present parliament, as members of the commonwealth and the king's most humble subjects."—Burnet's Hist. of Reformation, vol. ii., Appendix, No. 17. This assertion that the clergy had ever been associated as one body with the commons is not borne out by any thing that appears on our records, and is contradicted by many passages. But it is said that

iest year extant (23 E. I.), ad tractandum, ordinandum et faciendum nobiscum, et cum cæteris prælatis, proceribus, ac aliis incolis regni nostri; in that of the next year, ad ordinandum de quantitate et modo subsidii; in that of the twenty-eighth, ad faciendum et consentiendum his, quæ tunc de communi consilio ordinari contigerit. In later times, it ran sometimes ad faciendum et consentiendum, sometimes only ad consentiendum; which, from the fifth of Richard II., has been the term invariably adopted.* Now, as it is usual to infer from the same words, when introduced into the writs for election of the commons, that they possessed an enacting power implied in the words ad faciendum, or at least to deduce the necessity of their assent from the words ad consentiendum, it should seem to follow that the clergy were invested, as a branch of the parliament, with rights no less extensive. It is to be considered how we can reconcile these apparent attributes of political power with the unquestionable facts, that almost all laws, even while they continued to attend, were passed without their concurrence, and that, after some time, they ceased altogether to comply with the writ.†

The solution of this difficulty can only be found in that estrangement from the common law and the temporal courts, which the clergy throughout Europe were disposed to affect. In this country, their ambition defeated its own ends; and while they endeavoured by privileges and immunities to separate themselves from the people, they did not perceive that the line of demarcation thus strongly traced would cut them off from the sympathy of common interests. Every thing which they could call of ecclesiastical cognizance was drawn into their own courts; while the administration of what they contemned as a barbarous system, the temporal law of the land, fell into the hands of lay judges. But these were men not less subtle, not less ambitious, not less attached to their profession than themselves; and wielding, as they did in the courts of Westminster, the delegated sceptre of judicial sovereignty, they soon began to control the spiritual jurisdiction, and to establish the inherent supremacy of the common law. From this time an inveterate animosity subsisted between the two courts, the vestiges of which have only been effaced by the liberal wisdom of modern age. The general love of the common law, however, with the great weight of its professors in the king's council and in parliament, kept the clergy in surprising subjection. None of our kings after Henry III. were bigots; and the constant tone of the commons serves to show, that the English nation was thoroughly averse to ecclesiastical influence, whether of their own church or the see of Rome.

It was natural therefore to withstand the interference of the clergy summoned to parliament in legislation, as much as that of the spiritual court in temporal jurisdiction. With the ordinary subjects, indeed, of legislation they had little concern. The oppressions of the king's purveyors, or escheators, or officers of the forests, the abuses or defects of the common law, the regulations necessary for trading towns and seaports, were matters that touched them not, and to which their consent was never required. And, as they well knew there was no design in summoning their attendance but to obtain money, it was with great reluctance that they obeyed the royal writ, which was generally obliged to be enforced by an archiepiscopal mandate.* Thus, instead of an assembly of deputies from an estate of the realm, they became a synod or convocation. And it seems probable that in most, if not all, instances where the clergy are said in the roll of parliament to have presented their petitions, or are otherwise mentioned as a deliberative body, we should suppose the convocation alone of the province of Canterbury to be intended.† For that of York seems to have been always considered as inferior, and even ancillary to

the clergy were actually so united with the commons in the Irish parliament till the reformation.—Gilbert's Hist. of the Exchequer, p. 57.

* Hody, p. 392.

† The præmunientes clause in a bishop's writ of summons was so far regarded down to the Reformation, that proctors were elected, and their names returned upon the writ; though the clergy never attended from the beginning of the fifteenth century, and gave their money only in convocation. Since the Reformation, the clause has been preserved for form merely in the writ.—Wilkins, Dissertatio ubi supra.

* Hody, p. 396, 403, &c. In 1314, the clergy protest even against the recital of the king's writ to the archbishop, directing him to summon the clergy of his province, in his letters mandatory, declaring that the English clergy had not been accustomed, nor ought by right, to be convoked by the king's authority.—Atterbury, p. 230.

† Hody, p. 425. Atterbury, p. 42, 233. The latter seems to think that the clergy of both provinces never actually met in a national council or house of parliament, under the præmunientes writ after the reign of Edward II., though the proctors were duly returned. But Hody does not go quite so far, and Atterbury had a particular motive to enhance the influence of the convocation for Canterbury

the greater province, voting subsidies, and even assenting to canons, without deliberation, in compliance with the example of Canterbury ;* the convocation of which province consequently assumed the importance of a national council. But in either point of view the proceedings of this ecclesiastical assembly, collateral in a certain sense to parliament, yet very intimately connected with it, whether sitting by virtue of the præmunientes clause or otherwise, deserve some notice in a constitutional history.

In the sixth year of Edward III., the proctors of the clergy are specially mentioned as present at the speech pronounced by the king's commissioner, and retired, along with the prelates, to consult together upon the business submitted to their deliberation. They proposed accordingly a sentence of excommunication against disturbers of the peace, which was assented to by the lords and commons. The clergy are said afterward to have had leave, as well as the knights, citizens, and burgesses, to return to their homes; the prelates and peers continuing with the king.† This appearance of the clergy in full parliament is not perhaps so decisively proved by any later record. But in the eighteenth of the same reign several petitions of the clergy are granted by the king and his council, entered on the roll of parliament, and even the statute roll, and in some respects are still part of our law.‡ To these it seems highly probable that the commons gave no assent; and they may be reckoned among the other infringements of their legislative rights. It is remarkable that in the same parliament the commons, as if apprehensive of what was in preparation, besought the king that no petition of the clergy might be granted till he and his council should have considered whether it would turn to the prejudice of the lords or commons.§

A series of petitions from the clergy, in the twenty-fifth of Edward III., had not probably any real assent of the commons, though it is once mentioned in the enacting words, when they were drawn into a statute.‖ Indeed, the petitions correspond so little with the general sentiment of hostility towards ecclesiastical privileges manifested by the lower house of parliament, that they would not easily have obtained its acquiescence. The convocation of the province of Canterbury presented several petitions in the fiftieth year of the same king, to which they received an assenting answer; but they are not found in the statute-book. This however produced the following remonstrance from the commons at the next parliament: "Also the said commons beseech their lord the king, that no statute nor ordinance be made at the petition of the clergy, unless by assent of your commons; and that your commons be not bound by any constitutions which they make for their own profit without the commons' assent. For they will not be bound by any of your statutes or ordinances made without their assent."* The king evaded a direct answer to this petition. But the province of Canterbury did not the less present their own grievances to the king in that parliament, and two among the statutes of the year seem to be founded upon no other authority.†

In the first session of Richard II., the prelates and clergy of both provinces are said to have presented their schedule of petitions, which appear upon the roll, and three of which are the foundation of statutes unassented to in all probability by the commons.‡ If the clergy of both provinces were actually present, as is here asserted, it must of course have been as a house of parliament, and not of convocation. It rather seems, so far as we can trust to the phraseology of records, that the clergy sat also in a national assembly under the king's writ in the second year of the same king.§ Upon other occasions during the same reign, where the representatives of the clergy are alluded to as a deliberative body, sitting at the same time with the parliament, it is impossible to ascertain its constitution; and indeed, even from those already cited, we cannot draw any positive inference.‖

* Atterbury, p. 46.

† Rot. Parl., vol. ii., p. 64, 65.

‡ 18 E. III., stat. 3. Rot. Parl., vol. ii., p. 151. This is the parliament in which it is very doubtful whether any deputies from cities and boroughs had a place. The pretended statutes were therefore every way null; being falsely imputed to an incomplete parliament.

§ Ibid ‖ 25 E. III., stat. 3.

* P. 368. The word *they* is ambiguous; Whitelocke (on Parliamentary Writ, vol. ii., p. 346) interprets it of the commons: I should rather suppose it to mean the clergy.

† 50 E. III., c. 4 and 5.

‡ Rot. Parl., vol. iii., p. 25. A nostre tres excellent seigneur le roy suppliont humblement ses devotes oratours, les prelats et la clergie de la province de Canterbirs et d'Everwyk, stat. 1 R. II. c. 13, 14, 15. But see Hody, p. 425; Atterbury, p. 329. § Rot. Parl., vol. iii., p. 37.

‖ It might be argued, from a passage in the parliament-roll of 21 R. II., that the clergy of both provinces were not only present, but that they were accounted an essential part of parliament in temporal matters, which is contrary to the whole tenour of our laws. The commons are there said to have prayed, that "whereas many judgments

But whether in convocation or in parliament, they certainly formed a legislative council in ecclesiastical matters, by the advice and consent of which alone, without that of the commons (I can say nothing as to the lords), Edward III., and even Richard II., enacted laws to bind the laity. I have mentioned in a different place a still more conspicuous instance of this assumed prerogative; namely, the memorable statute against heresy in the second of Henry IV.; which can hardly be deemed any thing else than an infringement of the rights of parliament, more clearly established at that time than at the accession of Richard II. Petitions of the commons relative to spiritual matters, however frequently proposed, in few or no instances obtained the king's assent so as to pass into statutes, unless approved by the convocation.* But, on the other hand, scarcely any temporal laws appear to have passed by the concurrence of the clergy. Two instances only, so far as I know, are on record: the parliament held in the 11th of Richard II. is annulled by that in the twenty-first of his reign, "with the assent of the lords spiritual and temporal, *and the proctors of the clergy*, and the commons;"† and the statute entailing the crown on the children of Henry IV. is said to be enacted on the petition of the prelates, nobles, clergy, and commons.* Both these were stronger exertions of legislative authority than ordinary acts of parliament, and were very likely to be questioned in succeeding times.

Jurisdiction of the king's council.

The supreme judicature, which had been exercised by the king's court, was diverted, about the reign of John, into three channels; the tribunals of King's Bench, Common Pleas, and the Exchequer.† These became the regular fountains of justice, which soon almost absorbed the provincial jurisdictions of the sheriff and lord of manor. But the original institution, having been designed for ends of state, police, and revenue, full as much as for the determination of private suits, still preserved the most eminent parts of its authority. For the king's ordinary or privy council, which is the usual style from the reign of Edward I., seems to have been no other than the king's court (curia regis) of older times, being composed of the same persons, and having in a principal degree, the same subjects of deliberation. It consisted of the chief ministers; as the chancellor, treasurer lord steward, lord admiral, lord marshal the keeper of the privy seal, the chamberlain, treasurer and comptroller of the household, the chancellor of the exchequer, the master of the wardrobe; and of the judges, king's sergeant and attorney-general, the master of the rolls, and justices in eyre, who at that time were not the same as the judges at Westminster. When all these were called together, it was a full council; but where the business was of a more contracted nature, those only who were fittest to advise were summoned; the chancellor and judges, for matters of law; the officers of state for what concerned the revenue or household.

The business of this council, out of parliament, may be reduced to two heads its deliberative office, as a council of advice, and its decisive power of jurisdiction. With respect to the first, it obviously comprehended all subjects of political deliberation, which were usually referred to it by the king: this being in fact the administration or governing council of state, the distinction of a cabinet being in-

and ordinances formerly made in parliament had been annulled, *because the estate of clergy had not been present thereat*, the prelates and clergy might make a proxy with sufficient power to consent in their name to all things done in this parliament. Whereupon the spiritual lords agreed to intrust their powers to Sir Thomas Percy, and gave him a procuration, commencing in the following words: 'Nos Thomas Cantuar' et Robertus Ebor' archiepiscopi, ac prælati *et clerus utriusque provinciæ Cantuar' et Ebor' jure ecclesiarum nostrarum et temporalium earundem habentes jus interessendi in singulis parliamentis* domini nostri regis et regni Angliæ pro tempore celebrandis, necnon tractandi et expediendi in eisdem quantum ad singula in instanti parliamento pro statu et honore domini nostri regis, necnon regaliæ suæ, ac quiete, pace, et tranquillitate regni judicialiter justificandis, venerabili viro domino Thomæ de Percy militi, nostram plenarie committimus potestatem.'" It may be perceived by these expressions, and more unequivocally by the nature of the case, that it was the judicial power of parliament which the spiritual lords delegated to their proxy. Many impeachments for capital offences were coming on, at which, by their canons, the bishops could not assist. But it can never be conceived that the inferior clergy had any share in this high judicature. And, upon looking attentively at the words above printed in italics, it will be evident that the spiritual lords holding by barony are the only persons designated; whatever may have been meant by the singular phrase, as applied to them, clerus utriusque provinciæ.—Rot. Parl., vol. iii., p. 348.

* Atterbury, p. 346.

† 21 Rich. II., c. 12. Burnet's Hist. of Reformation (vol. ii., p. 47) led me to this act which I had overlooked.

* Rot. Parl., vol. iii., p. 582. Atterbury, p. 61.

† The ensuing sketch of the jurisdiction exercised by the king's council has been chiefly derived from Sir Matthew Hale's Treatise of the Jurisdiction of the Lords' House in Parliament, published by Mr. Hargrave.

troduced in comparatively modern times. But there were likewise a vast number of petitions continually presented to the council, upon which they proceeded no farther than to sort, as it were, and forward them by endorsement to the proper courts, or advise the suiter what remedy he had to seek. Thus some petitions are answered, "this cannot be done without a new law;" some were turned over to the regular court, as the chancery or king's bench; some of greater moment were endorsed to be heard "before the great council;" some, concerning the king's interest, were referred to the chancery, or select persons of the council.

The coercive authority exercised by this standing council of the king was far more important. It may be divided into acts legislative and judicial. As for the first, many ordinances were made in council; sometimes upon request of the commons in parliament, who felt themselves better qualified to state a grievance than a remedy; sometimes without any pretence, unless the usage of government, in the infancy of our constitution, may be thought to afford one. These were always of a temporary or partial nature, and were considered as regulations not sufficiently important to demand a new statute. Thus, in the second year of Richard II., the council, after hearing read the statute-roll of an act recently passed, conferring a criminal jurisdiction in certain cases upon justices of the peace, declared that the intention of parliament, though not clearly expressed therein, had been to extend that jurisdiction to certain other cases omitted, which accordingly they caused to be inserted in the commissions made to these justices under the great seal.* But they frequently so much exceeded what the growing spirit of public liberty would permit, that it gave rise to complaint in parliament. The commons petition, in 13 R. II., that "neither the chancellor nor the king's council, after the close of parliament, may make any ordinance against the common law, or the ancient customs of the land, or the statutes made heretofore or to be made in this parliament; but that the common law have its course for all the people, and no judgment be rendered without due legal process." The king answers, "Let it be done as has been usual heretofore, saving the prerogative; and if any one is aggrieved, let him show it specially, and right shall be done him."† This unsatisfactory answer proves the arbitrary spirit in which Richard was determined to govern.

The judicial power of the council was in some instances founded upon particular acts of parliament, giving it power to hear and determine certain causes. Many petitions likewise were referred to it from parliament, especially where they were left unanswered by reason of a dissolution. But, independently of this delegated authority, it is certain that the king's council did anciently exercise, as well out of parliament as in it, a very great jurisdiction, both in causes criminal and civil. Some, however, have contended, that whatever they did in this respect was illegal, and an encroachment upon the common law and Magna Charta. And be the common law what it may, it seems an indisputable violation of the charter, in its most admirable and essential article, to drag men in questions of their freehold or liberty before a tribunal which neither granted them a trial by their peers, nor always respected the law of the land. Against this usurpation the patriots of those times never ceased to lift their voices. A statute of the fifth year of Edward II. provides that no man shall be attached, nor his property seized into the king's hands against the form of the great charter and the law of the land. In the twenty-fifth of the same king, it was enacted, that "none shall be taken by petition or suggestion to the king or his council, unless it be by endictment or presentment, or by writ original at the common law, nor shall be put out of his franchise or freehold, unless he be duly put to answer, and forejudged of the same by due course of law."* This was repeated in a short act of the twenty-eighth of his reign;† but both, in all probability, were treated with neglect; for another was passed some years afterward, providing that no man shall be put to answer without presentment before justices, or matter of record, or by due process and writ original according to the old law of the land. The answer to the petition whereon this statute is grounded,

* Rot. Parl., vol. iii., p. 84. Id., p. 266.

* 25 E. III., stat. 5, c. 4. See the petition Rot. Parl., vol. ii., p. 228, which extends farther than the king's answer or the statute. Probably this fifth statute of the 25th of Edward III. is the most extensively beneficial act in the whole body of our laws. It established certainty in treasons, regulated purveyance, prohibited arbitrary imprisonment, and the determination of pleas of freehold before the council, took away the compulsory finding of men-at-arms and other troops, confirmed the reasonable aid of the king's tenants fixed by 3 E. I., and provided that the king's protection should not hinder civil process or execution.

† 28 E. III., c. 3.

in the parliament-roll, expressly declares this to be an article of the great charter.* Nothing, however, would prevail on the council to surrender so eminent a power, and, though usurped, yet of so long a continuance. Cases of arbitrary imprisonment frequently occurred, and were remonstrated against by the commons. The right of every freeman in that cardinal point was as indubitable, legally speaking, as at this day; but the courts of law were afraid to exercise their remedial functions in defiance of so powerful a tribunal. After the accession of the Lancastrian family, these, like other grievances, became rather less frequent; but the commons remonstrate several times, even in the minority of Henry VI., against the council's interference in matters cognizable at common law.† In these later times, the civil jurisdiction of the council was principally exercised in conjunction with the chancery, and accordingly they are generally named together in the complaint. The chancellor having the great seal in his custody, the council usually borrowed its process from his court. This was returnable into chancery even where the business was depending before the council. Nor were the two jurisdictions less intimately allied in their character; each being of an equitable nature; and equity, as then practised, being little less than innovation and encroachment on the course of law. This part, long since the most important, of the chancellor's judicial function, cannot be traced beyond the time of Richard II., when the practice of feoffments to uses having been introduced, without any legal remedy to secure the cestui que use, or usufructuary, against his feoffees, the court of chancery undertook to enforce this species of contract by process of its own.*

Such was the nature of the king's ordinary council in itself, as the organ of his executive sovereignty; and such the jurisdiction which it habitually exercised. But it is also to be considered in its relation to the parliament, during whose session, either singly, or in conjunction with the lords' house, it was particularly conspicuous. The great officers of state, whether peers or not, the judges, the king's sergeant, and attorney-general, were, from the earliest times, as the latter still continue to be, summoned by special writs to the upper house. But while the writ of a peer runs, ad tractandum nobiscum et cum cæteris prælatis, magnatibus et proceribus; that directed to one of the judges is only, ad tractandum nobiscum et cum cæteris de consilio nostro: and the seats of the latter are upon the woolsacks at one extremity of the house.

In the reigns of Edward I. and II., the council appear to have been the regular advisers of the king in passing laws, to which the houses of parliament had assented. The preambles of most statutes during this period express their concurrence. Thus, the statute Westm. I. is said to be the act of the king, by his council, and by the assent of archbishops bishops, abbots, priors, earls, barons, and all the commonalty of the realm being hither summoned. The statute of escheators, 29 E. I., is said to be agreed by the council, enumerating their names, all whom appear to be judges or public officers. Still more striking conclusions are to be drawn from the petitions addressed to the council by both houses of parliament. In the 8th of Edward II. there are four petitions from the commons to the king and his council, one from the

* 42 E. III., c. 3, and Rot. Parl., vol. ii., p. 295. It is not surprising that the king's council should have persisted in these transgressions of their lawful authority, when we find a similar jurisdiction usurped by the officers of inferior persons. Complaint is made in the 18th of Richard II., that men were compelled to answer before *the council of divers lords and ladies*, for their freeholds and other matters cognizable at common law, and a remedy for this abuse is given by petition in chancery, stat. 15 R. II., c. 12. This act is confirmed with a penalty on its contraveners the next year.—16 R. II., c. 2. The private jails which some lords were permitted by law to possess, and for which there was always a provision in their castles, enabled them to render this oppressive jurisdiction effectual.

† Rot. Parl., 17 R. II., vol. iii., p. 319; 4 H. IV., p. 507; 1 H. VI., vol. iv., p. 189; 3 H. VI., p. 292; 8 H. VI. p. 343; 10 H. VI., p. 403; 15 H. VI., p. 501. To one of these (10 H. VI.), "that none should be put to answer for his freehold in parliament, nor before any court or council where such things are not cognizable by the law of the land," the king gave a denial. As it was less usual to refuse promises of this kind than to forget them afterward, I do not understand the motive of this.

* Hale's Jurisdiction of Lords' House, p. 46. Coke, 2 Inst., p. 553. The last author places this a little later. There is a petition of the commons, in the roll of the 4th of Henry IV., p. 511, that whereas many grantees and feoffees in trust for their grantors and feoffers, alienate or charge the tenements granted, *in which case there is no remedy, unless one is ordered by parliament*, that the king and lords would provide a remedy. This petition is referred to the king's council to advise of a remedy against the ensuing parliament. It may perhaps be inferred from hence, that the writ of sub pœna out of chancery had not yet been applied to protect the cestui que use. But it is equally possible that the commons, being disinclined to what they would deem an illegal innovation were endeavouring to reduce these fiduciary estates within the pale of the common law, as was afterward done by the statute of uses.

ords alone, and one in which both appear to have joined. Later parliaments of the same reign present us with several more instances of the like nature. Thus, in 18 E. II., a petition begins: "To our lord the king, and to his council, the archbishops, bishops, prelates, earls, barons, and others of the commonalty of England, show," &c.*

But from the beginning of Edward III.'s reign, it seems that the council and the lords' house in parliament were often blended together into one assembly This was denominated the great council, being the lords spiritual and temporal, with the king's ordinary council annexed to them, as a council within a council. And even in much earlier times, the lords, as hereditary counsellors, were, either whenever they thought fit to attend, or on special summonses by the king (it is hard to say which), assistant members of this council, both for advice and for jurisdiction. This double capacity of the peerage, as members of the parliament or legislative assembly, and of the deliberative and judicial council, throws a very great obscurity over the subject. However, we find that private petitions for redress were, even under Edward I., presented to the lords in parliament as much as to the ordinary council. The parliament was considered a high court of justice, where relief was to be given in cases where the course of law was obstructed, as well as where it was defective. Hence the intermission of parliaments was looked upon as a delay of justice, and their annual meeting is demanded upon that ground. "The king," says Fleta, "has his court in his council, in his parliaments, in the presence of bishops, earls, barons, lords, and other wise men, where the doubtful cases of judgments are resolved, and new remedies are provided against new injuries, and justice is rendered to every man according to his desert."† In the third year of Edward II., receivers of petitions began to be appointed at the opening of every parliament, who usually transmitted them to the ordinary, but in some instances to the great council. These receivers were commonly three for England, and three for Ireland, Wales, Gascony, and other foreign dominions. There were likewise two corresponding classes of auditors, or triers of petitions. These consisted partly of bishops or peers, partly of judges and other members of the council; and they seem to have been instituted in order to disburden the council, by giving answers to some petitions. But about the middle of Edward III.'s time they ceased to act judicially in this respect, and confined themselves to transmitting petitions to the lords of the council.

The great council, according to the definition we have given, consisted of the lords spiritual and temporal, in conjunction with the ordinary council, or, in other words, of all who were severally summoned to parliament, exercised a considerable jurisdiction, as well civil as criminal. In this jurisdiction, it is the opinion of Sir M. Hale that the council, though not peers, had right of suffrage; an opinion very probable, when we recollect that the council, by themselves, both in and out of parliament, possessed, in fact, a judicial authority little inferior; and that the king's delegated sovereignty in the administration of justice, rather than any intrinsic right of the peerage, is the foundation on which the judicature of the lords must be supported. But in the time of Edward III. or Richard II., the lords, by their ascendency, threw the judges and rest of the council into shade, and took the decisive jurisdiction entirely to themselves, making use of their former colleagues but as assistants and advisers, as they still continue to be held in all the judicial proceedings of that house.

Those statutes which restrain the king's ordinary council from disturbing men in their freehold rights, or questioning them for misdemeanors, have an equal application to the lords' house in parliament, though we do not frequently meet with complaints of the encroachments made by that assembly. There was, however, one class of cases tacitly excluded from the operation of those acts, in which the coercive jurisdiction of this high tribunal had great convenience; namely, where the ordinary course of justice was so much obstructed by the defending party, through riots, combinations of maintenance, or overawing influence, that no inferior court would find its process obeyed. Those ages, disfigured in their quietest season by rapine and oppression, afforded no small number of cases that called for this interposition of a paramount authority:* They do not

* Rot. Parl., v. i., p. 416. † Id., l. ii., c. 2.

* This is remarkably expressed in one of the articles agreed in parliament 8 H. VI., for the regulation of the council. "Item, that alle the billes that comprehend matters terminable atte the common lawe, shall be remitted ther to be determined; but if so be that the discresion of the coun-

occur so frequently, however, in the rolls of parliament after the reign of Henry IV.; whether this be attributed to the gradual course of civilization, and to the comparative prosperity which England enjoyed under the line of Lancaster, or rather to the discontinuance of the lords' jurisdiction. Another indubitable branch of this jurisdiction was in writs of error: but it may be observed, that their determination was very frequently left to a select committee of peers and counsellors. These, too, cease almost entirely with Henry IV.; and were scarcely revived till the accession of James I.

Some instances occur in the reign of Edward III., where records have been brought into parliament, and annulled with assent of the commons as well as the rest of the legislature.* But these were attainders of treason, which it seemed gracious and solemn to reverse in the most authentic manner. Certainly the commons had neither by the nature of our constitution, nor the practice of parliament, any right of intermeddling in judicature; save where something was required beyond the existing law, or where, as in the statute of treasons, an authority of that kind was particularly reserved to both houses. This is fully acknowledged by themselves in the first year of Henry IV.† But their influence upon the balance of government became so commanding in a few years afterward, that they contrived, as has been mentioned already, to have petitions directed to them rather than to the lords or council, and to transmit them either with a tacit approbation, or in the form of acts, to the upper house. Perhaps this encroachment of the commons may have contributed to the disuse of the lords' jurisdiction, who would rather relinquish their ancient and honourable, but laborious function, than share it with such bold usurpers.

Although the restraining hand of parliament was continually growing more effectual, and the notions of legal right acquiring more precision from the time of Magna Charta to the civil wars under Henry VI., we may justly say, that the general tone of administration was not a little arbitrary. The whole fabric of English liberty rose step by step, through much toil and many sacrifices; each generation adding some new security to the work, and trusting that posterity would perfect the labour as well as enjoy the reward. A time perhaps was even then foreseen, in the visions of generous hope, by the brave knights of parliament, and by the sober sages of justice, when the proudest ministers of the crown should recoil from those barriers which were then daily pushed aside with impunity. Genera. character of the government in these ages.

There is a material distinction to be taken between the exercise of the king's undeniable prerogative, however repugnant to our improved principles of freedom, and the abuse or extension of it to oppressive purposes. For we cannot fairly consider as part of our ancient constitution what the parliament was perpetually remonstrating against, and the statute-book is full of enactments to repress. Doubtless the continual acquiescence of a nation in arbitrary government may ultimately destroy all privileges of positive institution, and leave them to recover, by such means as opportunity shall offer, the natural and imprescriptible rights for which human societies were established. And this may perhaps be the case at present with many European kingdoms. But it would be necessary to shut our eyes with deliberate prejudice against the whole tenour of the most unquestionable authorities, against the petitions of the commons, the acts of the legislature, the testimony of historians and lawyers, before we could assert that England acquiesced in those abuses and oppressions, which it must be owned she was unable fully to prevent.

The word prerogative is of a peculiar import, and scarcely understood by those who come from the studies of political philosophy. We cannot define it by any theory of executive functions. All these may be comprehended in it, but also a great deal more. It is best perhaps to be understood by its derivation; and has been said to be that law in case of the king* which is law in no case of the sub-

seill fele to grete myght on that o syde, and unmyght on tha other, or elles other cause resonable yat shal move him."—Rot. Parl., vol. iv., p. 343.

* The judgment against Mortimer was reversed at the suit of his son, 28 E. III., because he had not been put on his trial. The peers had adjudged him to death in his absence, upon common notoriety of his guilt.—4 E. III., p. 53. In the same session of 28 E. III., the Earl of Arundel's attainder was also reversed, which had passed in 1 E. III., when Mortimer was at the height of his power. These precedents taken together, seem to have resulted from no partiality, but a true sense of justice in respect of treasons, animated by the recent statute.—Rot. Parl., vol. ii., p. 256.

† Rot. Parl., vol. iii., p. 427.

* Blackstone's Com. from Finch, vol. i. c. 7.

ject. Of the higher and more sovereign prerogatives I shall here say nothing: they result from the nature of a monarchy, and have nothing very peculiar in their character. But the smaller rights of the crown show better the original lineaments of our constitution. It is said commonly enough, that all prerogatives are given for the subject's good. I must confess that no part of this assertion corresponds with my view of the subject. It neither appears to me that these prerogatives were ever given, nor that they necessarily redound to the subject's good. Prerogative, in its old sense, might be defined an advantage obtained by the crown over the subject, in cases where their interests came into competition, by reason of its greater strength. This sprang from the nature of the Norman government, which rather resembled a scramble of wild beasts, where the strongest takes the best share, than a system founded upon principles of common utility. And, modified as the exercise of most prerogatives has been by the more liberal tone which now pervades our course of government, whoever attends to the common practice of courts of justice, and, still more, whoever consults the law-books, will not only be astonished at their extent and multiplicity, but very frequently at their injustice and severity.

Purveyance.

The real prerogatives that might formerly be exerted were sometimes of so injurious a nature, that we can hardly separate them from their abuse: a striking instance is that of purveyance, which will at once illustrate the definition above given of a prerogative, the limits within which it was to be exercised, and its tendency to transgress them. This was a right of purchasing whatever was necessary for the king's household, at a fair price, in preference to every competitor, and without the consent of the owner. By the same prerogative, carriages and horses were impressed for the king's journeys, and lodgings provided for his attendants. This was defended on a pretext of necessity, or at least of great convenience to the sovereign, and was both of high antiquity and universal practice throughout Europe. But the royal purveyors had the utmost temptation, and doubtless no small store of precedents, to stretch this power beyond its legal boundary; and not only to fix their own price too low, but to seize what they wanted without any payment at all, or with tallies which were carried in vain to an empty exchequer.* This gave rise to a number of petitions from the commons, upon which statutes were often framed; but the evil was almost incurable in its nature, and never ceased till that prerogative was itself abolished. Purveyance, as I have already said, may serve to distinguish the defects from the abuses of our constitution. It was a reproach to the law, that men should be compelled to send their goods without their consent; it was a reproach to the administration, that they were deprived of them without payment.

The right of purchasing men's goods for the use of the king was extended by a sort of analogy to their labour. Thus Edward III. announces to all sheriffs, that William of Walsingham had a commission to collect as many painters as might suffice for "our works in St. Stephen's chapel, Westminster, to be at our wages as long as shall be necessary;" and to arrest and keep in prison all who should refuse or be refractory; and enjoins them to lend their assistance.† Windsor Castle owes its massive magnificence to labourers impressed from every part of the kingdom. There is even a commission from Edward IV. to take as many workmen in gold as were wanting, and employ them at the king's cost upon the trappings of himself and his household.‡

Abuses of feudal rights.

Another class of abuses intimately connected with unquestionable, though oppressive, rights of the crown, originated in the feudal tenure which bound all the lands of the kingdom. The king had indisputably a right to the wardship of his tenants in chivalry, and to the escheats or forfeitures of persons dying without heirs or attainted for treason. But his officers, under pretence of wardship, took possession of lands not held immediately of the

* Letters are directed to all the sheriffs, 2 Edw. I., enjoining them to send up a certain number of beeves, sheep, capons, &c. for the king's coronation.—Rymer, vol. ii., p. 31. By the statute 21 Edw. III., c. 12, goods taken by the purveyors were to be paid for on the spot if under twenty shillings value, or within three months time if above that value. But it is not to be imagined that this law was or could be observed.

Edward III., impelled by the exigences of his French war, went still greater lengths, and seized large quantities of wool, which he sold beyond sea, as well as provisions for the supply of his army. In both cases the proprietors had tallies, or other securities; but their despair of obtaining payment gave rise, in 1338, to an insurrection. There is a singular apologetical letter of Edward to the archbishops on this occasion.—Rymer, t. v. p. 10. See also p. 73, and Knyghton, col. 2570.

† Rymer, t. vi., p. 417. ‡ Id., t. xi., p. 852

crown, claimed escheats where a right heir existed, and seized estates as forfeited which were protected by the statute of entails. The real owner had no remedy against this dispossession, but to prefer his petition of right in chancery, or, which was probably more effectual, to procure a remonstrance of the house of commons in his favour. Even where justice was finally rendered to him, he had no recompense for his damages; and the escheators were not less likely to repeat an iniquity by which they could not personally suffer.

Forest laws.

The charter of the forests, granted by Henry III. along with Magna Charta,* had been designed to crush the flagitious system of oppression, which prevailed in those favourite haunts of the Norman kings. They had still, however, their peculiar jurisdiction, though, from the time at least of Edward III., subject in some measure to the control of the King's Bench.† The foresters, I suppose, might find a compensation for their want of the common law, in that easy and licentious way of life which they affected; but the neighbouring cultivators frequently suffered from the king's officers, who attempted to recover those adjacent lands, or, as they were called, purlieus, which had been disafforested by the charter, and protected by frequent perambulations. Many petitions of the commons relate to this grievance.

Jurisdiction of Constable and Marshal.

The constable and marshal of England possessed a jurisdiction, the proper limits whereof were sufficiently narrow, as it seems to have extended only to appeals of treason committed beyond sea, which were determined by combat, and to military offences within the realm. But these high officers frequently took upon them to inquire of treasons and felonies cognizable at common law, and even of civil contracts or trespasses. This is no bad illustration of the state in which our constitution stood under the Plantagenets. No colour of right or of supreme prerogative was set up to justify a procedure so manifestly repugnant to the great charter. For all remonstrances against these encroachments, the king gave promises in return; and a statute was enacted, in the 13th of Richard II., declaring the bounds of the constable and marshal's jurisdiction.* It could not be denied, therefore, that all infringements of these acknowledged limits were illegal, even if they had a hundred fold more actual precedents in their favour than can be supposed. But the abuse by no means ceased after the passing of this statute, as several subsequent petitions, that it might be better regarded, will evince. One, as it contains a special instance, I shall insert. It is of the fifth year of Henry IV. "On several supplications and petitions made by the commons in parliament to our lord the king for Bennet Wilman, who is accused by certain of his ill wishers, and detained in prison, and put to answer before the constable and marshal, against the statutes and the common law of England, our said lord the king, by the advice and assent of the lords in parliament, granted that the said Bennet should be treated according to the statutes and common law of England, notwithstanding any commission to the contrary, or accusation against him made before the constable and marshal." And a writ was sent to the justices of the king's bench, with a copy of this article from the roll of parliament, directing them to proceed as they shall see fit according to the laws and customs of England.†

It must appear remarkable, that, in a case so manifestly within their competence, the court of king's bench should not have issued a writ of habeas corpus, without waiting for what may be considered as a particular act of parliament. But it is a natural effect of an arbitrary administration of government, to intimidate courts of justice.‡ A negative ar-

* Matthew Paris asserts that John granted a separate forest-charter, and supports his position by inserting that of Henry III. at full length. In fact, the clauses relating to the forest were incorporated with the great charter of John. Such an error as this shows the precariousness of historical testimony, even where it seems to be best grounded.

† Coke, 4th Inst., p 294. The forest domain of the king, says the author of the Dialogue on the Exchequer under Henry II., is governed by its own laws, not founded on the common law of the land, but the voluntary enactment of princes; so that whatever is done by that law is reckoned not legal in itself, but legal according to forest law, p. 29, non justum absolutè, sed justum secundùm legem forestæ dicatur. I believe my translation of *justum* is right; for he is not writing satirically.

* 13 R. II., c. 2. † Rot. Parl., vol. iii., p. 530.

‡ The apprehension of this compliant spirit in the ministers of justice led to an excellent act in 2 E. III., c. 8, that the judges shall not omit to do right for any command under the great or privy seal. And the conduct of Richard II., who sought absolute power by corrupting or intimidating them, produced another statute in the eleventh year of his reign (c. 10), providing that neither letters of the king's signet nor of the privy seal should from thenceforth be sent in disturbance of the law. An ordinance of Charles V., king of France, in 1369 directs the parliament of Paris to pay no regard to any letters under his seal suspending the course

gument, founded upon the want of legal precedent, is certainly not conclusive, when it relates to a distant period, of which all the precedents have not been noted; yet it must strike us, that in the learned and zealous arguments of Sir Robert Cotton, Mr. Selden, and others, against arbitrary imprisonment, in the great case of the habeas corpus, though the statute law is full of authorities in their favour, we find no instance adduced, earlier than the reign of Henry VII., where the king's bench has released, or even bailed, persons committed by the council, or the constable, though it is unquestionable that such committals were both frequent and illegal.*

If I have faithfully represented thus far the history of our constitution, its essential character will appear to be a monarchy greatly limited by law, though retaining much power that was ill calculated to promote the public good, and swerving continually into an irregular course, which there was no restraint adequate to correct. But of all the notions that have been advanced as to the theory of this constitution, the least consonant to law and history is that which represents the king as merely an hereditary executive magistrate, the first officer of the state. What advantages might result from such a form of government, this is not the place to discuss. But it certainly was not the ancient constitution of England. There was nothing in this, absolutely nothing, of a republican appearance. All seemed to grow out of the monarchy, and was referred to its advantage and honour. The voice of supplication, even in the stoutest disposition of the commons, was always humble; the prerogative was always named in large and pompous expressions. Still more naturally may we expect to find in the law-books even an obsequious deference to power; from judges who scarcely ventured to consider it as their duty to defend the subject's freedom, and who beheld the gigantic image of prerogative, in the full play of its hundred arms, constantly before their eyes. Through this monarchical tone, which certainly pervades all our legal authorities, a writer like Hume, accustomed to philosophical liberality as to the principles of government, and to the democratical language which the modern aspect of the constitution and the liberty of printing have produced, fell hastily into the error of believing that all limitations of royal power during the fourteenth and fifteenth centuries were as much unsettled in law and in public opinion, as they were liable to be violated by force. Though a contrary position has been sufficiently demonstrated, I conceive, by the series of parliamentary proceedings which I have already produced, yet there is a passage in Sir John Fortescue's treatise De Laudibus Legum Angliæ, so explicit and weighty, that no writer on the English constitution can be excused from inserting it. This eminent person, having been chief justice of the king's bench under Henry VI., was governor to the young Prince of Wales during his retreat in France, and received at his hands the office of chancellor. It must never be forgotten, that in a treatise purposely composed for the instruction of one who hoped to reign over England, the limitations of government are enforced as strenuously by Fortescue, as some succeeding lawyers have inculcated the doctrines of arbitrary prerogative.

Sir John Fortescue's doctrine as to the English Constitution.

"A king of England cannot at his pleasure make any alterations in the laws of the land, for the nature of his government is not only regal, but political. Had it been merely regal, he would have a power to make what innovations and alterations he pleased in the laws of the kingdom, impose tallages and other hardships upon the people, whether they would or no, without their consent, which sort of government the civil laws point out when they declare, Quod principi placuit, legis habet vigorem. But it is much

legal procedure, but to consider them as surreptitiously obtained.—Villaret, t. x., p. 175. This ordinance, which was sedulously observed, tended very much to confirm the independence and integrity of that tribunal.

* Cotton's Posthuma, p. 221. Howell's State Trials, vol. iii., p. 1. Hume quotes a grant of the office of constable to the Earl of Rivers in 7 Edw. IV., and infers, unwarrantably enough, that "its authority was in direct contradiction to Magna Charta; and it is evident that no regular liberty could subsist with it. It involved a full dictatorial power, continually subsisting in the state."—Hist. of England, c. 22. But by the very words of this patent the jurisdiction given was only over such causes quæ in curiâ constabularii Angliæ ab antiquo, viz., tempore dicti Gulielmi conquæstoris, seu aliquo tempore citra, tractari, audiri, examinari, aut decidi consueverunt aut *jure debuerant aut debent*. These are expressed, though not very perspicuously, in the statute 13 Ric. II., c. 2, that declares the constable's jurisdiction. And the chief criminal matter reserved by law to the court of this officer was treason committed out of the kingdom. In violent and revolutionary seasons, such as the commencement of Edward IV.'s reign, some persons were tried by martial law before the constable. But in general, the exercise of criminal justice by this tribunal, though one of the abuses of the times, cannot be said to warrant the strong language adopted by Hume.

otherwise with a king whose government is political, because he can neither make any alteration or change in the laws of the realm without the consent of the subjects, nor burden them against their wills with strange impositions, so that a people governed by such laws as are made by their own consent and approbation enjoy their properties securely, and without the hazard of being deprived of them, either by the king or any other. The same things may be effected under an absolute prince, provided he do not degenerate into the tyrant. Of such a prince Aristotle, in the third of his Politics, says, 'It is better for a city to be governed by a good man than by good laws.' But because it does not always happen that the person presiding over a people is so qualified, St. Thomas, in the book which he writ to the King of Cyprus, De Regimine Principum, wishes, that a kingdom could be so instituted as that the king might not be at liberty to tyrannise over his people; which only comes to pass in the present case; that is, when the sovereign power is restrained by political laws. Rejoice, therefore, my good prince, that such is the law of the kingdom to which you are to inherit, because it will afford, both to yourself and subjects, the greatest security and satisfaction."*

The two great divisions of civil rule, the absolute, or regal, as he calls it, and the political, Fortescue proceeds to deduce from the several originals of conquest and compact. Concerning the latter, he declares emphatically, a truth not always palatable to princes, that such governments were instituted by the people and for the people's good; quoting St. Augustine for a similar definition of a political society. "As the head of a body natural cannot change its nerves and sinews, cannot deny to the several parts their proper energy, their due proportion and aliment of blood, neither can a king, who is the head of a body politic, change the laws thereof, nor take from the people what is theirs by right against their consent. Thus you have, sir, the formal institution of every political kingdom, from whence you may guess at the power which a king may exercise with respect to the laws and the subject. For he is appointed to protect his subjects in their lives, properties, and laws; for this very end and purpose he has the delegation of power from the people, and he has no just claim to any other power but this. Wherefore, to give a brief answer to that question of yours concerning the different powers which kings claim over their subjects, I am firmly of opinion that it arises solely from the different natures of their original institution, as you may easily collect from what has been said. So the kingdom of England had its original from Brute and the Trojans, who attended him from Italy and Greece, and became a mixed kind of government, compounded of the regal and political."*

It would occupy too much space to quote every other passage of the same nature in this treatise of Fortescue, and in that entitled, Of the Difference between an Absolute and Limited Monarchy, which, so far as these points are concerned, is nearly a translation from the former.† But these, corroborated as they are by the statute-book and by the rolls of parliament, are surely conclusive against the notions which pervade Mr. Hume's History. I have already remarked that a sense of the glaring prejudice by which some whig writers had been actuated, in representing the English constitution from the earliest times as nearly arrived at its present perfection, conspired with certain prepossessions of his own to lead this eminent historian into an equally erroneous system on the opposite side. And as he traced the stream backwards, and came last to the times of the Plantagenet dynasty, with opinions already biased and even pledged to the world in his volumes of earlier publication, he was prone to seize hold of and even exaggerate every circumstance that indicated immature civilization, and law perverted or infringed.‡ To this his ignorance of

Erroneous views taken by Hume.

* Fortescue, De Laudibus Legum Angliæ, c. 9.

* Fortescue, De Laudibus Legum Angliæ, c. 13.

† The latter treatise having been written under Edward IV., whom Fortescue, as a restored Lancastrian, would be anxious not to offend, and whom in fact he took some pains to conciliate both in this and other writings, it is evident that the principles of limited monarchy were as fully recognised in his reign, whatever particular acts of violence might occur, as they had been under the Lancastrian princes.

‡ The following is one example of these prejudices: In the 9th of Richard II. a tax on wool, granted till the ensuing feast of St. John Baptist, was to be intermitted from thence to that of St. Peter, and then to recommence; that it might not be claimed as a right.—Rot. Parl., vol. iii., p. 214. Mr. Hume has noticed this provision, as "showing an accuracy beyond what was to be expected in those *rude* times." In this epithet we see the foundation of his mistakes. The age of Richard II. might perhaps be called rude in some respects. But assuredly, in prudent and circumspect perception of consequences, and an accurate use of language, there could be no reason why it should be

English jurisprudence, which certainly in some measure disqualified him from writing our history, did not a little contribute; misrepresentations frequently occurring in his work, which a moderate acquaintance with the law of the land would have prevented.

Instances of illegal condemnation rare.

It is an honourable circumstance to England, that the history of no other country presents so few instances of illegal condemnations upon political charges. The judicial torture was hardly known, and never recognised by law.* The sentence in capital crimes, fixed unalterably by custom, allowed nothing to vindictiveness and indignation. There hardly occurs an example of any one being notoriously put to death without form of trial, except in moments of flagrant civil war. If the right of juries were sometimes evaded by irregular jurisdictions, they were at least held sacred by the courts of law: and through all the vicissitudes of civil liberty, no one ever questioned the primary right of every freeman, handed down from his Saxon forefathers, to the trial by his peers. A just regard for public safety prescribes the necessity of severe penalties against rebellion and conspiracy; but the interpretation of these offences, when intrusted to sovereigns and their counsellors, has been the most tremendous instrument of despotic power. In rude ages, even though a general spirit of political liberty may prevail, the legal character of treason will commonly be undefined; nor is it the disposition of lawyers to give greater accuracy to this part of criminal jurisprudence. The nature of treason appears to have been subject to much uncertainty in England before the statute of Edward III. If that memorable law did not give all possible precision to the offence, which we must certainly allow, it prevented at least those stretches of vindictive tyranny which disgrace the annals of other countries. The praise, however, must be understood as comparative. Some cases of harsh, if not illegal convictions, could hardly fail to occur, in times of violence and during changes of the reigning family Perhaps the circumstances have now and then been aggravated by historians. Nothing could be more illegal than the conviction of the Earl of Cambridge and Lord Scrop, in 1415, if it be true, according to Carte and Hume, that they were not heard in their defence. But whether this is to be absolutely inferred from the record,* is perhaps open to question. There seems at least to have been no sufficient motive for such an irregularity; their participation in a treasonable conspiracy being manifest from their own confession. The proceedings against Sir John Mortimer in the 2d of Henry VI.† are called by Hume highly irregular and illegal. They were, however, by act of attainder, which cannot well be styled illegal. Nor are they to be considered as severe. Mortimer had broken out of the Tower, where he was confined on a charge of treason. This was a capital felony at common law; and the chief irregularity seems to have consisted in having recourse to parliament in order to attaint him of treason, when he had already forfeited his life by another crime

I would not willingly attribute to the prevalence of tory dispositions what may be explained otherwise, the progress which Mr. Hume's historical theory as to our constitution has been gradually making since its publication. The tide of opinion, which, since the Revolution, and indeed since the reign of James I., had been flowing so strongly in favour of the antiquity of our liberties, now seems, among the higher and more literary classes, to set pretty decidedly the other way. Though we may still sometimes hear a demagogue chattering about the wittenagemot, it is far more usual to find sensible and liberal men who look on Magna Charta itself as the result of an uninteresting squabble between the king and his barons. Acts of force and injustice, which strike the cursory inquirer, especially if he derives his knowledge from modern compilations more than the average tenour of events, are selected and displayed as fair samples of the law

deemed inferior to our own. If Mr. Hume had ever deigned to glance at the legal decisions reported in the Year-books of those times, he would have been surprised, not only at the utmost *accuracy*, but at a subtle refinement in verbal logic, which none of his own metaphysical treatises could surpass.

* During the famous process against the knights templars in the reign of Edward II., the Archbishop of York, having taken the examination of certain templars in his province, felt some doubts, which he propounded to several monasteries and divines. Most of these relate to the main subject. But one question, fitter indeed for lawyers than theologians, was, whereas many would not confess without torture, whether he might make use of this means, *licet hoc in regno Angliæ nunquam visum fuerit vel auditum?* Et si torquendi sunt, utrum per clericos vel laicos? Et dato, quòd *nullus omnino toriæ inveniri valeat* in Angliâ, utrum pro tortoribus mittendum sit ad partes transmarinas?—Walt. Hemingford, p. 256.

* Rot. Parl., vol. iv., p. 65. † Id., p. 202

and of its administration. We are deceived by the comparatively perfect state of our present liberties, and forget that our superior security is far less owing to positive law than to the control which is exercised over government by public opinion through the general use of printing, and to the diffusion of liberal principles in policy through the same means. Thus, disgusted at a contrast which it was hardly candid to institute, we turn away from the records that attest the real, though imperfect, freedom of our ancestors; and are willing to be persuaded that the whole scheme of English polity, till the commons took on themselves to assert their natural rights against James I., was at best but a mockery of popular privileges, hardly recognised in theory, and never regarded in effect.

This system, when stripped of those slavish inferences that Brady and Carte attempted to build upon it, admits perhaps of no essential objection but its want of historical truth. God forbid that our rights to just and free government should be tried by a jury of antiquaries! Yet it is a generous pride that intertwines the consciousness of hereditary freedom with the memory of our ancestors; and no trifling argument against those who seem indifferent in its cause, that the character of the bravest and most virtuous among nations has not depended upon the accidents of race or climate, but been gradually wrought by the plastic influence of civil rights, transmitted as a prescriptive inheritance through a long course of generations.

Causes tending to form the constitution.

By what means the English acquired and preserved this political liberty, which, even in the fifteenth century, was the admiration of judicious foreigners,* is a very rational and interesting inquiry. Their own serious and steady attachment to the laws must always be reckoned among the principal causes of this blessing. The civil equality of all freemen below the rank of peerage, and the subjection of peers themselves to the impartial arm of justice, and to a just share in contribution to public burdens, advantages unknown to other countries, tended to identify the interests and to assimilate the feelings of the aristocracy with those of the people; classes whose dissension and jealousy have been in many instances the surest hope of sovereigns aiming at arbitrary power. This freedom from the oppressive superiority of a privileged order was peculiar to England. In many kingdoms the royal prerogative was at least equally limited. The statutes of Aragon are more full of remedial provisions. The right of opposing a tyrannical government by arms was more frequently asserted in Castile. But nowhere else did the people possess by law, and I think, upon the whole, in effect, so much security for their personal freedom and property. Accordingly, the middling ranks flourished remarkably, not only in commercial towns, but among the cultivators of the soil. "There is scarce a small village," says Sir J. Fortescue, "in which you may not find a knight, an esquire, or some substantial householder (paterfamilias), commonly called a frankleyn,* possessed of considerable estate; besides others who are called freeholders, and many yeomen of estates sufficient to make a substantial jury." I would, however, point out more particularly two causes which had a very leading efficacy in the gradual development of our constitution; first, the schemes of continental ambition in which our government was long engaged; secondly, the manner in which feudal principles of insubordination and resistance were modified by the prerogatives of the early Norman kings.

1. At the epoch when William the Conqueror ascended the throne, hardly any other power was possessed by the King of France than what he inherited from the great fiefs of the Capetian family. War with such a potentate was not exceedingly to be dreaded, and William, besides his immense revenue, could employ the feudal services of his vassals, which were extended by him to continental expeditions. These circumstances were not essentially changed till after the loss of Normandy; for the acquisitions of Henry II. kept him fully on an equality with the French crown, and the dilapidation which had taken place in

* Philip de Comines takes several opportunities of testifying his esteem for the English government. See particularly l. iv., c. i., and l. v., c. xix.

* By a frankleyn in this place we are to understand what we call a country squire, like the frankleyn of Chaucer; for the word esquire in Fortescue's time was only used in its limited sense, for the sons of peers and knights, or such as had obtained the title by creation or some other legal means.

The mention of Chaucer leads me to add, that the prologue to his Canterbury Tales is of itself a continual testimony to the plenteous and comfortable situation of the middle ranks in England, as well as to that fearless independence and frequent originality of character among them, which liberty and competence have conspired to produce

the royal demesnes was compensated by several arbitrary resources that filled the exchequer of these monarchs. But in the reigns of John and Henry III., the position of England, or rather of its sovereign, with respect to France, underwent a very disadvantageous change. The loss of Normandy severed the connexion between the English nobility and the continent; they had no longer estates to defend, and took not sufficient interest in the concerns of Guienne to fight for that province at their own cost. Their feudal service was now commuted for an escuage, which fell very short of the expenses incurred in a protracted campaign. Tallages of royal towns and demesne lands, extortion of money from the Jews, every feudal abuse and oppression were tried in vain to replenish the treasury, which the defence of Eleanor's inheritance against the increased energy of France was constantly exhausting. Even in the most arbitrary reigns, a general tax upon landholders, in any cases but those prescribed by the feudal law, had not been ventured; and the standing bulwark of Magna Charta, as well as the feebleness and unpopularity of Henry III., made it more dangerous to violate an established principle. Subsidies were therefore constantly required; but for these it was necessary for the king to meet parliament, to hear their complaints, and, if he could not elude, to acquiesce in their petitions. These necessities came still more urgently upon Edward I., whose ambitious spirit could not patiently endure the encroachments of Philip the Fair, a rival not less ambitious, but certainly less distinguished by personal prowess than himself. What advantage the friends of liberty reaped from this ardour for continental warfare, is strongly seen in the circumstances attending the Confirmation of the Charters.

But after this statute had rendered all tallages without consent of parliament illegal, though it did not for some time prevent their being occasionally imposed, it was still more difficult to carry on a war with France or Scotland, to keep on foot naval armaments, or even to preserve the courtly magnificence which that age of chivalry affected, without perpetual recurrence to the house of commons. Edward III. very little consulted the interests of his prerogative when he stretched forth his hand to seize the phantom of a crown in France. It compelled him to assemble parliament almost annually, and often to hold more than one session within the year.—Here the representatives of England learned the habit of remonstrance and conditional supply; and though, in the meridian of Edward's age and vigour, they often failed of immediate redress, yet they gradually swelled the statute-roll with provisions to secure their country's freedom; and acquiring self-confidence by mutual intercourse, and sense of the public opinion, they became able, before the end of Edward's reign, and still more in that of his grandson, to control, prevent, and punish the abuses of administration. Of all these proud and sovereign privileges, the right of refusing supply was the keystone. But for the long wars in which our kings were involved, at first by their possession of Guienne, and afterward by their pretensions upon the crown of France, it would have been easy to suppress remonstrances by avoiding to assemble parliament. For it must be confessed, that an authority was given to the king's proclamations, and to ordinances of the council, which differed but little from legislative power, and would very soon have been interpreted by complaisant courts of justice to give them the full extent of statutes.

It is common indeed to assert, that the liberties of England were bought with the blood of our forefathers. This is a very magnanimous boast; and in some degree is consonant enough to the truth. But it is far more generally accurate to say, that they were purchased by money. A great proportion of our best laws, including Magna Charta itself, as it now stands confirmed by Henry III., were, in the most literal sense, obtained by a pecuniary bargain with the crown. In many parliaments of Edward III. and Richard II. this sale of redress is chaffered for as distinctly, and with as little apparent sense of disgrace, as the most legitimate business between two merchants would be transacted. So little was there of voluntary benevolence in what the loyal courtesy of our constitution styles concessions from the throne; and so little title have these sovereigns, though we cannot refuse our admiration to the generous virtues of Edward III. and Henry V., to claim the gratitude of posterity as the benefactors of their people!

2. The relation established between a lord and his vassal, by the feudal tenure, far from containing principles of any servile and implicit obedience, permitted the compact to be dissolved in case of its violation by either party. This extend-

ed as much to the sovereign as to inferior lords; the authority of the former in France, where the system most flourished, being for several ages rather feudal than political. If a vassal was aggrieved, and if justice was denied him, he sent a defiance, that is, a renunciation of fealty to the king, and was entitled to enforce redress at the point of his sword. It then became a contest of strength as between two independent potentates, and was terminated by treaty, advantageous or otherwise, according to the fortune of war. This privilege, suited enough to the situation of France, the great peers of which did not originally intend to admit more than a nominal supremacy in the house of Capet, was evidently less compatible with the regular monarchy of England. The stern natures of William the Conqueror and his successors kept in control the mutinous spirit of their nobles, and reaped the profit of feudal tenures, without submitting to their reciprocal obligations. They counteracted, if I may so say, the centrifugal force of that system by the application of a stronger power; by preserving order, administering justice, checking the growth of baronial influence and riches, with habitual activity, vigilance, and severity. Still, however, there remained the original principle, that allegiance depended conditionally upon good treatment, and that an appeal might be lawfully made to arms against an oppressive government. Nor was this, we may be sure, left for extreme necessity, or thought to require a long enduring forbearance. In modern times, a king compelled by his subjects' swords to abandon any pretension would be supposed to have ceased to reign; and the express recognition of such a right as that of insurrection has been justly deemed inconsistent with the majesty of law. But ruder ages had ruder sentiments. Force was necessary to repel force; and men accustomed to see the king's authority defied by private riot were not much shocked when it was resisted in defence of public freedom.

The Great Charter of John was secured by the election of twenty-five barons, as conservators of the compact. If the king, or the justiciary in his absence, should transgress any article, any four might demand reparation, and on denial carry their complaint to the rest of their body. "And those barons, with all the commons of the land, shall distrain and annoy us by every means in their power; that is, by seizing our castles, lands, and possessions, and every other mode, til the wrong shall be repaired to their satisfaction; saving our person, and our queen and children. And when it shall be repaired they shall obey us as before."* It is amusing to see the common law of distress introduced upon this gigantic scale; and the capture of the king's castles treated as analogous to impounding a neighbour's horse for breaking fences.

A very curious illustration of this feudal principle is found in the conduct of William, earl of Pembroke, one of the greatest names in our ancient history, towards Henry III. The king had defied him, which was tantamount to a declaration of war; alleging that he had made an inroad upon the royal domains. Pembroke maintained that he was not the aggressor, that the king had denied him justice, and been the first to invade his territory; on which account he had thought himself absolved from his homage, and at liberty to use force against the malignity of the royal advisers. "Nor would it be for the king's honour," the earl adds, "that I should submit to his will against reason, whereby I should rather do wrong to him and to that justice which he is bound to administer towards his people: and I should give an ill example to all men in deserting justice and right in compliance with his mistaken will. For this would show that I loved my worldly wealth better than justice." These words, with whatever dignity expressed, it may be objected, prove only the disposition of an angry and revolted earl. But even Henry fully admitted the right of taking arms against himself, if he had meditated his vassal's destruction, and disputed only the application of this maxim to the Earl of Pembroke.†

These feudal notions, which placed the moral obligation of allegiance very low, acting under a weighty pressure from the real strength of the crown, were favourable to constitutional liberty. The great vassals of France and Germany aimed at living independently on their fiefs, with no further concern for the rest than as useful allies having a common interest against the crown. But in England, as there was no prospect of throwing off subjection, the barons endeavoured only to lighten its burden, fixing limits to prerogative by law, and securing their observation by parliamentary remonstrances or by dint of arms. Hence, as all

* Brady's Hist., vol. i., Appendix, p. 148.
† Matt. Paris, p. 330 Lyttleton's Hist. of Henry II., vol. iv., p. 41.

rebellions in England were directed only to coerce the government, or, at the utmost, to change the succession of the crown, without the smallest tendency to separation. they did not impair the national strength, nor destroy the character of the constitution. In all these contentions, it is remarkable that the people and clergy sided with the nobles against the throne. No individuals are so popular with the monkish annalists, who speak the language of the populace, as Simon, earl of Leicester, Thomas, earl of Lancaster, and Thomas, duke of Glocester, all turbulent opposers of the royal authority, and probably little deserving of their panegyrics. Very few English historians of the middle ages are advocates of prerogative. This may be ascribed both to the equality of our laws, and to the interest which the aristocracy found in courting popular favour when committed against so formidable an adversary as the king. And even now, when the stream that once was hurried along gullies, and dashed down precipices, hardly betrays, upon its broad and tranquil bosom, the motion that actuates it, it must still be accounted a singular happiness of our constitution, that all ranks graduating harmoniously into one another, the interests of peers and commoners are radically interwoven; each in a certain sense distinguishable, but not balanced like opposite weights, not separated like discordant fluids, not to be secured by insolence or jealousy, but by mutual adherence and reciprocal influences.

Influence which the state of manners gave the nobility.

From the time of Edward I., the feudal system and all the feelings connected with it declined very rapidly. But what the nobility lost in the number of their military tenants was in some degree compensated by the state of manners. The higher class of them, who took the chief share in public affairs, were exceedingly opulent; and their mode of life gave wealth an incredibly greater efficacy than it possesses at present. Gentlemen of large estates and good families, who had attached themselves to these great peers, who bore offices, which we should call menial, in their households, and sent their children thither for education, were of course ready to follow their banner in rising, without much inquiry into the cause. Still less would the vast body of tenants, and their retainers, who were fed at the castle in time of peace, refuse to carry their pikes and staves into the field of battle. Many devices were used to preserve this aristocratic influence which riches and ancestry of themselves rendered so formidable. Such was the maintenance of suits, or confederacies for the purpose of supporting each other's claims in litigation, which was the subject of frequent complaints in parliament, and gave rise to several prohibitory statutes. By help of such confederacies parties were enabled to make violent entries upon the lands they claimed, which the law itself could hardly be said to discourage.* Even proceedings in courts of justice were often liable to intimidation and influence.† A practice much allied to confederacies of maintenance, though ostensibly more harmless, was that of giving liveries to all retainers of a noble family; but it had an obvious tendency to preserve that spirit of factious attachments and animosities, which it is the general policy of a wise government to dissipate. From the first year of Richard II. we find continual mention of this custom, with many legal provisions against it, but it was never abolished till the reign of Henry VII.‡

* If a man was disseized of his land, he might enter upon the disseisor and reinstate himself without course of law. In what case this right of entry was taken away, or *tolled*, as it was expressed by the death or alienation of the disseisor, is a subject extensive enough to occupy two chapters of Lyttleton. What pertains to our inquiry is, that by an entry, in the old law books, we must understand an actual repossession of the disseisee, not a suit in ejectment, as it is now interpreted, but which is a comparatively modern proceeding. The first remedy, says Britton, of the disseisee is to collect a body of his friends (recoiller amys et force), and without delay to cast out the disseisors, or at least to maintain himself in possession along with them, c. 44. This entry ought indeed, by 5 Rich. II., stat. i., c. 8, to be made peaceably; and the justices might assemble the posse comitatus, to imprison persons entering on lands by violence (15 Ric. II., c. 2), but these laws imply the facts that made them necessary.

† No lord or other person, by 20 Ric. II., c. 3, was permitted to sit on the bench with the justices of assize. Trials were sometimes overawed by armed parties, who endeavoured to prevent their adversaries from appearing.—Paston Letters, vol. iii., p. 119.

‡ From a passage in the Paston Letters (vol. ii. p. 23), it appears that, far from these acts being regarded, it was considered as a mark of respect to the king, when he came into a county, for the noblemen and gentry to meet him with as many attendants in livery as they could muster. Sir John Paston was to provide twenty men in their livery gowns, and the Duke of Norfolk two hundred. This illustrates the well-known story of Henry VII. and the Earl of Oxford, and shows the mean and oppressive conduct of the king in that affair which Hume has pretended to justify.

In the first of Edward IV. it is said in the roll of parliament (vol. v., p. 407), that "by yeving of liveries and signes, contrary to the statutes and ordinances made aforetyme, maintenaunce of quarrels

These associations under powerful chiefs were only incidentally beneficial as they tended to withstand the abuses of prerogative. In their more usual course, they were designed to thwart the legitimate exercise of the king's government in the administration of the laws. All Europe was a scene of intestine anarchy during the middle ages; and though England was far less exposed to the scourge of private war than most nations on the continent, we should find, could we recover the local annals of every country, such an accumulation of petty rapine and tumult, as would almost alienate us from the liberty which served to engender it. This was the common tenour of manners, sometimes so much aggravated as to find a place in general history,* more often attested by records, during the three centuries that the house of Plantagenet sat on the throne. Disseisin, or forcible dispossession of freeholds, makes one of the most considerable articles in our law-books.† Highway robbery was from the earliest times a sort of national crime. Capital punishments, though very frequent, made little impression on a bold and licentious crew, who had at least the sympathy of those who had nothing to lose on their side, and flattering prospects of impunity. We know how long the outlaws of Sherwood lived in tradition; men who, like some of their betters, have been permitted to redeem by a few acts of generosity the just ignominy of extensive crimes. These, indeed, were the heroes of vulgar applause; but when such a judge as Sir John Fortescue could exult that more Englishmen were hanged for robbery in one year than French in seven, and that "if an Englishman be poor, and see another having riches, which may be taken from him by might, he will not spare to do so,"* it may be perceived how thoroughly these sentiments had pervaded the public mind.

Prevalent habits of rapine.

Such robbers, I have said, had flattering prospects of impunity. Besides the general want of communication, which made one who had fled from his own neighbourhood tolerably secure, they had the advantage of extensive forests to facilitate their depredations, and prevent detection. When outlawed, or brought to trial, the worst offenders could frequently purchase charters of pardon, which defeated justice in the moment of her blow.† Nor were the nobility

extortions, robberies, murders been multiplied and continued within this reame, to the grete disturbaunce and inquietation of the same."

* Thus, to select one passage out of many; Eodem anno (1332) quidam maligni, fulti quorundam magnatum præsidio, regis adolescentiam spernentes, et regnum perturbare intendentes, in tantam turbam creverunt, nemora et saltus occupaverunt, ita quod toti regno terrori essent.—Walsingham, p. 132.

† I am aware that in many, probably a great majority of reported cases, this word was technically used, where some unwarranted conveyance, such as a feoffment by the tenant for life, was held to have wrought a disseisin; or where the plaintiff was allowed, for the purpose of a more convenient remedy, to feign himself disseized, which was called disseisin by election. But several proofs might be brought from the parliamentary petitions, and I doubt not, if nearly looked at, from the year-books, that in other cases there was an actual and violent expulsion. And the definition of disseisin in all the old writers, such as Britton and Littleton, is obviously framed upon its primary meaning of violent dispossession, which the word had probably acquired long before the more peaceable disseisins, if I may use the expression, became the subject of the remedy by assize.

I would speak with deference of Lord Mansfield's elaborate judgment in Taylor dem. Atkins v. Horde, 1 Burrow, 107, &c.; but some positions in it appear to me rather too strongly stated; and particularly, that the acceptance of the disseisor as tenant by the lord was necessary to render the disseisin complete; a condition which I have not found hinted in any law book.—See Butler's note on Co. Litt., p. 330; where that eminent lawyer expresses similar doubts as to Lord Mansfield's reasoning. It may however be remarked, that constructive or elective disseisins, being of a technical nature, were more likely to produce cases in the year-books, than those accompanied with actual violence, which would commonly turn only on matters of fact, and be determined by a jury.

A remarkable instance of violent disseisin amounting in effect to a private war, may be found in the Paston Letters, occupying most of the fourth volume. One of the Paston family, claiming a right to Caister Castle, kept possession against the Duke of Norfolk, who brought a large force, and laid a regular siege to the place, till it surrendered for want of provisions. Two of the besiegers were killed. It does not appear that any legal measures were taken to prevent or punish this outrage.

* Difference between an Absolute and Limited Monarchy, p. 99.

† The manner in which these were obtained, in spite of law, may be noticed among the violent courses of prerogative. By statute 2 E. III., c. 2, confirmed by 10 E. III., c. 2, the king's power of granting pardons was taken away, except in cases of homicide per infortunium. Another act, 14 E. III., c. 15, reciting that the former laws in this respect have not been kept, declares that all pardons contrary to them shall be holden as null. This, however, was disregarded like the rest; and the commons began tacitly to recede from them, and endeavoured to compromise the question with the crown. By 27 E. III., stat. 1, c. 2, without adverting to the existing provisions, which may therefore seem to be repealed by implication, it is enacted that in every charter of pardon, granted at any one's suggestion, the suggestor's name and the grounds of his suggestion shall be expressed, that if the same be found untrue, it may be disallowed. And in 13 R. II., stat. 2, c. 1, we are surprised to find the commons requesting that pardons might not

ashamed to patronise men guilty of every crime. Several proofs of this occur in the rolls. Thus, for example, in the 22d of Edward III., the commons pray, that 'whereas it is notorious how robbers and malefactors infest the country, the king would charge the great men of the land that none such be maintained by them, privily or openly, but that they lend assistance to arrest and take such ill doers."*

It is perhaps the most meritorious part of Edward I.'s government, that he bent all his power to restrain these breaches of tranquillity. One of his salutary provisions is still in constant use, the statute of coroners. Another more extensive, and, though partly obsolete, the foundation of modern laws, is the statute of Winton, which, reciting that, "from day to day robberies, murders, burnings, and theft be more often used than they have been heretofore, and felons cannot be attainted by the oath of jurors, which had rather suffer robberies on strangers to pass without punishment, than indite the offenders, of whom great part be people of the same country, or at least, if the offenders be of another country, the receivers be of places near," enacts that hue and cry shall be made upon the commission of a robbery, and that the hundred shall remain answerable for the damage unless the felons be brought to justice. It may be inferred from this provision, that the ancient law of frankpledge, though retained longer in form, had lost its efficiency. By the same act, no stranger or suspicious person was to lodge even in the suburbs of towns; the gates were to be kept locked from sunset to sunrising; every host to be answerable for his guest; the highways to be cleared of trees and underwood for two hundred feet on each side; and every man to keep arms, according to his substance, in readiness to follow the sheriff on hue and cry raised after felons.* The last provision indicates that the robbers plundered the country in formidable bands. One of these, in a subsequent part of Edward's reign, burnt the town of Boston during a fair, and obtained a vast booty, though their leader had the ill fortune not to escape the gallows.

The preservation of order throughout the country was originally intrusted, not only to the sheriff, coroner, and constables, but to certain magistrates, called conservators of the peace. These, in conformity to the democratic character of our Saxon government, were elected by the freeholders in their county-court.† But Edward I. issued commissions to carry into effect the statute of Winton; and from the beginning of Edward III.'s reign, the appointment of conservators was vested in the crown, their authority gradually enlarged by a series of statutes, and their title changed to that of justices. They were empowered to imprison and punish all rioters and other offenders, and such as they should find by endictment, or suspicion, to be reputed thieves or vagabonds; and to take sureties for good behaviour from persons of evil fame.‡ Such a jurisdiction was hard-

be granted, as if the subject were wholly unknown to the law; the king protesting in reply that he will save his liberty and regality, as his progenitors had done before, but conceding some regulations, far less remedial than what were provided already by the 27th of Edward II. Pardons make a pretty large head in Brooke's Abridgment, and were undoubtedly granted without scruple by every one of our kings. A pardon obtained in a case of peculiar atrocity is the subject of a specific remonstrance in 23 H. VI., Rot. Parl., vol. v., p. 111.

* Rot. Parl., vol. ii., p. 201. A strange policy, for which no rational cause can be alleged, kept Wales, and even Cheshire, distinct from the rest of the kingdom. Nothing could be more injurious to the adjacent countries. Upon the credit of their immunity from the jurisdiction of the king's courts, the people of Cheshire broke with armed bands into the neighbouring counties, and perpetrated all the crimes in their power.—Rot. Parl., vol. iii., p. 81, 201, 440. Stat. 1 H. IV., c. 18. As to the Welsh frontier, it was constantly almost in a state of war, which a very little good sense and benevolence in any of our shepherds would have easily prevented, by admitting the conquered people to partake in equal privileges with their fellow-subjects. Instead of this, they satisfied themselves with aggravating the mischief by granting legal reprisals upon Welshmen.—Stat. 2 H. IV., c. 16. Welshmen were absolutely excluded from bearing office in Wales. The English living in the English towns of Wales earnestly petition, 23 H. VI., Rot. Parl., vol. v., p. 104, 154, that this exclusion may be kept in force. Complaints of the disorderly state of the Welsh frontier are repeated as late as 12 Edw. IV., vol. vi., p. 8.

It is curious that, so early as 15 Edw. II., a writ was addressed to the Earl of Arundel, justiciary of Wales, directing him to cause twenty four discreet persons to be chosen from the north, and as many from the south of that principality, to serve in parliament.—Rot. Parl., vol. i., p. 456. And we find a similar writ in the 20th of the same king.—Prynne's Reg., 4th part, p. 60. Willis says, that he has seen a return to one of these precepts, much obliterated, but from which it appears that Conway, Beaumaris, and Carnarvon returned members.—Notitia Parliamentaria, vol. i., preface, p. 15.

* The statute of Winton was confirmed, and proclaimed afresh by the sheriffs, 7 R. II., c. 6, after an era of great disorder.

† Blackstone, vol. i., c. 9. Carte, vol. ii., p. 203.

‡ 1 E. III., stat. ii., c. 16; 4 E. III., c. 2, 34 E. III., c. 1; 7 R. II., c. 5. The institution excited a good deal of ill-will, even before these strong acts were passed. Many petitions of the commons in the 28th E. III., and other years, complain of it.—Rot. Parl., vol. ii.

ty more arbitrary that, in a free and civilized age, it has been thought fit to vest in magistrates; but it was ill endured by a people who placed their notions of liberty in personal exemption from restraint, rather than any political theory. An act having been passed (2 R. II., st. 2, c. 6) in consequence of unusual riots and outrages, enabling magistrates to commit the ringleaders of tumultuary assemblies without waiting for legal process till the next arrival of justices of jail delivery, the commons petitioned the next year against this "horrible grievous ordinance," by which "every freeman in the kingdom would be in bondage to these justices," contrary to the great charter and to many statutes, which forbid any man to be taken without due course of law.* So sensitive was their jealousy of arbitrary imprisonment, that they preferred enduring riot and robbery to chastising them by any means that might afford a precedent to oppression, or weaken men's reverence for Magna Charta.

There are two subjects remaining, to which this retrospect of the state of manners naturally leads us, and which I would not pass unnoticed, though not perhaps absolutely essential to a constitutional history; because they tend in a very material degree to illustrate the progress of society, with which civil liberty and regular government are closely connected. These are, first, the servitude or villanage of the peasantry, and their gradual emancipation from that condition; and, secondly, the continual increase of commercial intercourse with foreign countries. But as the latter topic will fall more conveniently into the next part of this work, I shall postpone its consideration for the present.

Villanage of the peasantry. Its nature and gradual extinction.

In a former passage I have remarked of the Anglo-Saxon ceorls, that neither their situation nor that of their descendants for the earlier reigns after the conquest appears to have been mere servitude. But from the time of Henry II., as we learn from Glanvil, the villein so called was absolutely dependant upon his lord's will, compelled to unlimited services, and destitute of property, not only in the land he held for his maintenance, but in his own acquisitions.† If a villein purchased or inherited land, the lord might seize it; if he accumulated stock, its possession was equally precarious. Against his lord he had no right of action; because his indemnity in damages, if he could have recovered any, might have been immediately taken away. If he fled from his lord's service or from the land which he held, a writ issued de nativitate probandâ, and the master recovered his fugitive by law. His children were born to the same state of servitude; and, contrary to the rule of the civil law, where one parent was free and the other in villanage, the offspring followed their father's condition.*

This was certainly a severe lot; yet there are circumstances which materially distinguish it from slavery. The condition of villanage, at least in later times, was perfectly relative; it formed no distinct order in the political economy. No man was a villein in the eye of law, unless his master claimed him: to all others he was a freeman, and might acquire, dispose of, or sue for property without impediment. Hence, Sir E. Coke argues, that villeins are included in the 29th article of Magna Charta:—"No freeman shall be disseized nor imprisoned."† For

* Rot. Parl., vol. iii., p. 65. It may be observed that this act, 2 E. II., c. 16, was not founded on a petition, but on the king's answer; so that the commons were not real parties to it, and accordingly call it an ordinance in their present petition. This naturally increased their animosity in treating it as an infringement of the subject's right

† Glanvil, l. v., c. 5.

* According to Bracton, the bastard of a nief, or female villein, was born in servitude; and where the parents lived on a villein tenement, the children of a nief, even though married to a freeman, were villeins, l. iv., c. 21, and see Beame's translation of Glanvil, p. 109. But Littleton lays down an opposite doctrine, that a bastard was necessarily free because, being the child of no father in the contemplation of law, he could not be presumed to inherit servitude from any one; and makes no distinction as to the parent's residence.—Sect. 188. I merely take notice of this change in the law between the reigns of Henry III. and Edward IV. as an instance of the bias which the judges showed in favour of personal freedom. Another, if we can rely upon it, is more important. In the reign of Henry II., a freeman marrying a nief and settling on a villein tenement, lost the privileges of freedom during the time of his occupation; legem terræ quasi nativus amittit.—Glanvil, l. v., c. 6. This was consonant to the customs of some other countries, some of which went farther, and treated such a person for ever as a villein. But, on the contrary, we find in Britton a century later, that the nief herself by such a marriage became free during the coverture, c. 31.

† I must confess that I have some doubts how far this was law at the epoch of Magna Charta. Glanvil and Bracton both speak of the *status villenagii* as opposed to that of liberty, and seem to consider it as a civil condition, not a merely personal relation. The civil law and the French treatise of Beaumanoir hold the same language. And Sir Robert Cotton maintains without hesitation, that villeins are not within the 29th section of Magna Charta, "being excluded by the word liber."—Cotton's Posthuma, p. 223. Britton, however, a little after Bracton, says that in an action the villein is answerable to all men, and all men to him, p. 79. And later judges, in favorem libertatis, gave this

murder, rape, or mutilation of his villein, the lord was endictable at the king's suit; though not for assault or imprisonment, which were within the sphere of his signorial authority.*

This class was distinguished into villeins regardant, who had been attached from time immemorial to a certain manor, and villeins in gross, where such territorial prescription had never existed or had been broken. In the condition of these, whatever has been said by some writers, I can find no manner of difference; the distinction was merely technical, and affected only the mode of pleading.† The term, in gross, is appropriated in our legal language to property held absolutely, and without reference to any other. Thus it is applied to rights of advowson or of common, when possessed simply, and not as incident to any particular lands. And there can be no doubt that it was used in the same sense for the possession of a villein. But there was a class of persons, sometimes inaccurately confounded with villeins, whom it is more important to separate. Villanage had a double sense, as it related to persons or to lands. As all men were free or villeins, so all lands were held by a free or villein tenure This great division of tenures was probably derived from the bockland and folk land of Saxon times. As a villein might be enfeoffed of freeholds, though they lay at the mercy of his lord, so a freeman might hold tenements in villanage. In this case, his personal liberty subsisted along with the burdens of territorial servitude. He was bound to arbitrary service at the will of the lord, and he might by the same will be at any moment dispossessed; for such was the condition of his tenure. But his chattels were secure from seizure, his person from injury, and he might leave the land whenever he pleased.*

From so disadvantageous a condition as this of villanage, it may cause some surprise that the peasantry of England should have ever emerged. The law incapacitating a villein from acquiring property, placed, one would imagine, an insurmountable barrier in the way of his enfranchisement. It followed from thence, and is positively said by Glanvil, that a villein could not buy his freedom, because the price he tendered would already belong to his lord.† And even in the case of free tenants in villanage, it is not easy to comprehend how their uncertain and unbounded services could ever pass into slight pecuniary commutations; much less how they could come to maintain themselves in their lands, and mock the lord with a nominal tenure according to the custom of the manor.

This, like many others relating to the progress of society, is a very obscure inquiry. We can trace the pedigree of princes, fill up the catalogue of towns besieged and provinces desolated, describe even the whole pageantry of coronations and festivals, but we cannot recover the genuine history of mankind. It has passed away with slight and partial notice by contemporary writers; and our most patient industry can hardly at present put together enough of the fragments to suggest a tolerably clear representation of ancient manners and social life. I cannot profess to undertake what would require a command of books as well as leisure beyond my reach; but the following observations may tend a little to illustrate our immediate subject, the gradual extinction of villanage.

If we take what may be considered as the simplest case, that of a manor divided into demesne lands of the lord's occupa-

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construction to the villein's situation, which must therefore be considered as the clear law of England in the fourteenth and fifteenth centuries.

* Littleton, sect. 189, 190, speaks only of an appeal in the two former cases; but an endictment is a fortiori; and he says, sect. 194, that an endictment, though not an appeal, lies against the lord for maiming his villein.

† Gurdon on Courts Baron, p. 592, supposes the villein in gross to have been the Lazzus or Servus of early times, a domestic serf, and of an inferior species to the cultivator or villein regardant. Unluckily, Bracton and Littleton do not confirm this notion, which would be convenient enough; for in Domesday Book there is a marked distinction between the Servi and Villani. Blackstone expresses himself inaccurately when he says the villein in gross was annexed to the person of the lord, and transferable by deed from one owner to another. By this means indeed, a villein regardant would become a villein in gross, but all villeins were alike liable to be sold by their owners.—Littleton, sect. 181. Blomefield's Norfolk, vol. iii., p. 860. Mr. Hargrave supposes that villeins in gross were never numerous (Case of Somerset, Howell's State Trials, vol. xx., p. 42); drawing this inference from the few cases relative to them that occur in the Year-books. And certainly the form of a writ de nativitate probandâ, and the peculiar evidence it required, which may be found in Fitzherbert's Natura Brevium, or in Mr. H.'s argument, are only applicable to the other species. It is a doubtful point, whether a freeman could, in contemplation of la , become a villein in gross; though his confession in a court of record, upon a suit already commenced (for this was requisite), would estop him from claiming his liberty; and hence Bracton speaks of this proceeding as a mode by which a freeman might fall into servitude

* Bracton, l. ii., c. 8; v., c. 28. Littleton, sect. 172.

† Glanvil. l. iv. c. 5

tion and those in the tenure of his villeins, performing all the services of agriculture for him, it is obvious that his interest was to maintain just so many of these as his estate required for its cultivation Land, the cheapest of articles, was the price of their labour; and though the law did not compel him to pay this or any other price, yet necessity, repairing in some degree the law's injustice, made those pretty secure of food and dwellings who were to give the strength of their arms for his advantage. But in course of time, as alienations of small parcels of manors to free tenants came to prevail, the proprietors of land were placed in a new situation relatively to its cultivators. The tenements in villanage, whether by law or usage, were never separated from the lordship, while its domain was reduced to a smaller extent, through sub-infendations, sales, or demises for valuable rent. The purchasers under these alienations had occasion for labourers; and these would be free servants in respect of such employers, though in villanage to their original lord. As he demanded less of their labour through the diminution of his domain, they had more to spare for other masters; and retaining the character of villeins and the lands they held by that tenure, became hired labourers in husbandry for the greater part of the year. It is true that all their earnings were at the lord's disposal, and that he might have made a profit of their labour when he ceased to require it for his own land. But this, which the rapacity of more commercial times would have instantly suggested, might escape a feudal superior, who, wealthy beyond his wants, and guarded by the haughtiness of ancestry against the love of such pitiful gains, was better pleased to win the affection of his dependants than to improve his fortune at their expense.

The services of villanage were gradually rendered less onerous and uncertain. Those of husbandry indeed are naturally uniform, and might be anticipated with no small exactness. Lords of generous tempers granted indulgences, which were either intended to be, or readily became perpetual. And thus, in the time of Edward I., we find the tenants in some manors bound only to stated services, as recorded in the lord's book.*

Some of these perhaps might be villeins by blood; but free tenants in villanage were still more likely to obtain this precision in their services; and from claiming a customary right to be entered in the court-roll upon the same terms as their predecessors, prevailed at length to get copies of it for their security.* Proofs of this remarkable transformation from tenants in villanage to copyholders are found in the reign of Henry III. I do not know, however, that they were protected, at so early an epoch, in the possession of their estates. But it is said in the year-book of the 42d of Edward III to be "admitted for clear law, that if the customary tenant or copyholder does not perform his services, the lord may seize his land as forfeited."† It seems implied herein, that so long as the copyholder did continue to perform the regular stipulations of his tenure, the lord was not at liberty to divest him of his estate; and this is said to be confirmed by a passage in Britton, which has escaped my search; though Littleton intimates that copyholders could have no remedy against their lord.‡ However, in the reign of Edward IV., this was put out of doubt by the judges, who permitted the copyholder to bring his action of trespass against the lord for dispossession.

While some of the more fortunate villeins crept up into property as well as freedom under the name of copyholders, the greater part enfranchised themselves in a different manner. The law, which treated them so harshly, did not take

* Dugdale's Warwickshire apud Eden's State of the Poor, vol. i., p. 13. A passage in another local history rather seems to indicate, that some kind of delinquency was usually alleged, and some ceremony employed before the lord entered on the villein's land. In Gissing manor, 39 E. III., the jury present, that W. G., a villein by blood, was a rebel and ungrateful towards his lord, for which all his tenements were seized. His offence was the having said that the lord kept four stolen sheep in his field.—Blomefield's Norfolk, vol. i., p. 114.

* Gurdon on Courts Baron, p. 574.

† Brooke's Abridgm. Tenant par copie, 1. By the extent-roll of the manor of Brisingham in Norfolk in 1254, it appears that there were then ninety-four copyholders and six cottagers in villanage; the former performing many, but determinate services of labour for the lord.—Blomefield's Norfolk, vol. i., p. 34.

‡ Litt., sect. 77. A copyholder without legal remedy may seem little better than a tenant in mere villanage, except in name. But though from the relation between the lord and copyholder the latter might not be permitted to sue his superior, yet it does not follow that he might not bring his action against any person acting under the lord's direction, in which the defendant could not set up an illegal authority; just as, although no writ runs against the king, his ministers or officers are not justified in acting under his command contrary to law. I wish this note to be considered as correcting one on p. 88 of this work, where I have said that a similar law in France rendered the distinction between a serf and an homme de poote little more than theoretical.

away the means of escape, nor was this a matter of difficulty in such a country as England. To this indeed the unequal progression of agriculture and population in different counties would have naturally contributed. Men emigrated, as they always must, in search of cheapness or employment, according to the tide of human necessities. But the villein, who had no additional motive to urge his steps away from his native place, might well hope to be forgotten or undiscovered when he breathed a freer air, and engaged his voluntary labour to a distant master. The lord had indeed an action against him; but there was so little communication between remote parts of the country, that it might be deemed his fault or singular ill-fortune if he were compelled to defend himself. Even in that case, the law inclined to favour him; and so many obstacles were thrown in the way of these suits to reclaim fugitive villeins, that they could not have operated materially to retard their general enfranchisement.* In one case indeed, that of unmolested residence for a year and a day within a walled city or borough, the villein became free, and the lord was absolutely barred of his remedy. This provision is contained even in the laws of William the Conqueror, as contained in Hoveden, and if it be not an interpolation, may be supposed to have had a view to strengthen the population of those places which were designed for garrisons. This law, whether of William or not, is unequivocally mentioned by Glanvil.† Nor was it a mere letter. According to a record in the 6th of Edward II., Sir John Clavering sued eighteen villeins of his manor of Cossey, for withdrawing themselves therefrom with their chattels; whereupon a writ was directed to them; but six of the number claimed to be freemen, alleging the Conqueror's charter, and offering to prove that they had lived in Norwich, paying scot and lot, about thirty years; which claim was admitted.‡

By such means a large proportion of the peasantry, before the middle of the fourteenth century, had become hired labourers instead of villeins. We first hear of them on a grand scale in an ordinance made by Edward III., in the twenty-third year of his reign. This was just after the dreadful pestilence of 1348, and it recites that the number of workmen and servants having been greatly reduced by that calamity, the remainder demanded excessive wages from their employers. Such an enhancement in the price of labour, though founded exactly on the same principles as regulate the value of any other commodity, is too frequently treated as a sort of crime by lawgivers, who seem to grudge the poor that transient melioration of their lot, which the progress of population, or other analogous circumstances, will, without any interference, very rapidly take away. This ordinance therefore enacts that every man in England, of whatever condition, bond or free, of able body, and within sixty years of age, not living of his own nor by any trade, shall be obliged, when required, to serve any master who is willing to hire him at such wages as were usually paid three years since, or for some time preceding; provided that the lords of villeins or tenants in villanage shall have the preference of their labour, so that they retain no more than shall be necessary for them. More than these old wages is strictly forbidden to be offered, as well as demanded. No one is permitted, under colour of charity, to give alms to a beggar. And, to make some compensation to the inferior classes for these severities, a clause is inserted, as wise, just, and practicable as the rest, for the sale of provisions at reasonable prices.*

This ordinance met with so little regard, that a statute was made in parliament two years after, fixing the wages of all artificers and husbandmen, with regard to the nature and season of their labour. From this time it became a frequent complaint of the commons, that the statute of labourers was not kept. The king had in this case, probably, no other reason for leaving their grievance unredressed, than his inability to change the order of Providence. A silent alteration had been wrought in the condition and character of the lower classes during the reign of Edward III. This was the effect of increased knowledge and refinement, which had been making a considerable progress for full half a century, though they did not readily permeate the cold region of poverty and ignorance. It was natural that the country people, or outlandish folk, as they were called

* See the rules of pleading and evidence in questions of villanage fully stated in Mr. Hargrave's argument in the case of Somerset.—Howell's State Trials, vol. xx., p. 38.

† L. v., c. 5.

‡ Blomefield's Norfolk, vol. i., p. 657. I know not how far this privilege was supposed to be impaired by the statute 34 E. III., c. 11; which however might, I should conceive, very well stand along with it.

* Stat. 23 E. III.

should repine at the exclusion from that enjoyment of competence, and security for the fruits of their labour, which the inhabitants of towns so fully possessed. The fourteenth century was, in many parts of Europe, the age when a sense of political servitude was most keenly felt. Thus, the insurrection of the Jacquerie in France, about the year 1358, had the same character, and resulted in a great measure from the same causes, as that of the English peasants in 1382. And we may account in a similar manner for the democratical tone of the French and Flemish cities, and for the prevalence of a spirit of liberty in Germany and Swisserland.

I do not know whether we should attribute part of this revolutionary concussion to the preaching of Wicliffe's disciples, or look upon both one and the other as phenomena belonging to that particular epoch in the progress of society. New principles, both as to civil rule and religion, broke suddenly upon the uneducated mind, to render it bold, presumptuous, and turbulent. But at least I make little doubt that the dislike of ecclesiastical power, which spread so rapidly among the people at this season, connected itself with a spirit of insubordination and an intolerance of political subjection. Both were nourished by the same teachers, the lower secular clergy; and however distinct we may think a religious reformation from a civil anarchy, there was a good deal common in the language, by which the populace were inflamed to either one or the other. Even the scriptural moralities which were then exhibited, and which became the foundation of our theatre, afforded fuel to the spirit of sedition. The common original, and common destination of mankind, with every other lesson of equality which religion supplies to humble or to console, were displayed with coarse and glaring features in these representations. The familiarity of such ideas has deadened their effect upon our minds; but when a rude peasant, surprisingly destitute of religious instruction during that corrupt age of the church, was led at once to these impressive truths, we cannot be astonished at the intoxication of mind they produced *

Though I believe that compared at least with the aristocracy of other countries, the English lords were guilty of very little cruelty or injustice, yet there were circumstances belonging to that period which might tempt them to deal more hardly than before with their peasantry. The fourteenth century was an age of greater magnificence than those which had preceded, in dress, in ceremonies, in buildings; foreign luxuries were known enough to excite an eager demand among the higher ranks, and yet so scarce as to yield inordinate prices; while the landholders were on the other hand empoverished by heavy and unceasing taxation. Hence it is probable that avarice, as commonly happens, had given birth to oppression; and if the gentry, as I am inclined to believe, had become more attentive to agricultural improvements, it is reasonable to conjecture that those whose tenure obliged them to unlimited services of husbandry were more harassed than under their wealthy and indolent masters in preceding times.

The storm that almost swept away all bulwarks of civilized and regular society seems to have been long in collecting itself. Perhaps a more sagacious legislature might have contrived to disperse it: but the commons only presented complaints of the refractoriness with which villeins and tenants in villanage received their due services;* and the exigences of government led to the fatal poll-tax of a groat, which was the proximate cause of the insurrection. By the demands of these rioters, we perceive that territorial servitude was far from extinct: but it should not be hastily concluded that they were all personal villeins, for a large proportion were Kentishmen, to whom that condition could not have applied; it being a good bar to a writ de nativitate probandâ, that the party's father was born in the county of Kent.†

* I have been more influenced by natural probabilities than testimony, in ascribing this effect to Wicliffe's innovations, because the historians are prejudiced witnesses against him. Several of them depose to the connexion between his opinions and the rebellion of 1382; especially Walsingham, p. 288. This implies no reflection upon Wicliffe, any more than the crimes of the anabaptists in Munster do upon Luther. Every one knows the distich of John Ball, which comprehends the essence of religious democracy:—

"When Adam delved and Eve span,
Where was then the gentleman?"

The sermon of this priest, as related by Walsingham, p. 275, derives its argument for equality from the common origin of the species. He is said to have been a disciple of Wicliffe.—Turner's Hist. of England, vol. ii., p. 420.

* Stat. 1 R. II., c. 6; Rot. Parl., vol. iii, p. 21

† 30 E. I., in Fitzherbert. Villanage, apud Lambard's Perambulation of Kent p. 632. Somner on Gavelkind, p. 72.

After this tremendous rebellion, it might be expected that the legislature would use little indulgence towards the lower commons. Such unhappy tumults are doubly mischievous, not more from the immediate calamities that attend them, than from the fear and hatred of the people which they generate in the elevated classes. The general charter of manumission extorted from the king by the rioters at Blackheath was annulled by proclamation to the sheriffs;* and this revocation approved by the lords and commons in parliament, who added, as was very true, that such enfranchisement could not be made without their consent; "which they would never give to save themselves from perishing altogether in one day."† Riots were turned into treason by a law of the same parliament.‡ By a very harsh statute in the 12th of Richard II., no servant or labourer could depart, even at the expiration of his service, from the hundred in which he lived, without permission under the king's seal; nor might any who had been bred to husbandry till twelve years old exercise any other calling.§ A few years afterward, the commons petitioned that villeins might not put their children to school, in order to advance them by the church; "and this for the honour of all the freemen of the kingdom." In the same parliament they complained that villeins fly to cities and boroughs, whence their masters cannot recover them; and, if they attempt it, are hindered by the people: and prayed that the lords might seize their villens in such places, without regard to the franchises thereof. But on both these petitions the king put in a negative.‖

From henceforward we find little notice taken of villanage in parliamentary records, and there seems to have been a rapid tendency to its entire abolition. But the fifteenth century is barren of materials; and we can only infer, that as the same causes which in Edward III.'s time had converted a large portion of the peasantry into free labourers, still continued to operate, they must silently have extinguished the whole system of personal and territorial servitude. The latter in deed was essentially changed by the establishment of the law of copyhold.

I cannot presume to conjecture in what degree voluntary manumission is to be reckoned among the means that contributed to the abolition of villanage. Charters of enfranchisement were very common upon the continent. They may perhaps have been less so in England. Indeed, the statute de donis must have operated very injuriously to prevent the enfranchisement of villeins regardant, who were entailed along with the land. Instances, however, occur from time to time; and we cannot expect to discover many. One appears as early as the 15th year of Henry III., who grants to all persons born or to be born within his village of Contishall, that they shall be free from all villanage in body and blood, paying an aid of twenty shillings to knight the king's eldest son, and six shillings a year as a quit rent.* So, in the 12th of Edward III., certain of the king's villeins are enfranchised on payment of a fine.† In strictness of law, a fine from the villein for the sake of enfranchisement was nugatory, since all he could possess was already at his lord's disposal. But custom and equity might easily introduce different maxims; and it was plainly for the lord's interest to encourage his tenants in the acquisition of money to redeem themselves, rather than to quench the exertions of their industry by availing himself of an extreme right. Deeds of enfranchisement occur in the reigns of Mary and Elizabeth;‡ and perhaps a commission of the latter princess in 1574, directing the enfranchisement of her bondmen and bondwomen on certain manors upon payment of a fine, is

* Rymer, t. vii., p. 316, &c. The king holds this bitter language to the villeins of Essex, after the death of Tyler and execution of the other leaders had disconcerted them; Rustici quidem fuistis et estis, in bondagio permanebitis, non ut hactenus, sed incomparabiliter viliori, &c.—Walsingham, p. 269.

† Rot. Parl., vol. iii., p. 100.

‡ 5 R. II., c. 7. The words are, riot et rumour *n'autres semblables*; rather a general way of creating a new treason: but panic puts an end to jealousy.

§ 12 R. II., c. 3.

‖ Rot. Parl., 15 R. II., vol. iii., p. 294, 296. The statute 7 H. IV., c. 17, enacts that no one shall put his son or daughter apprentice to any trade in a borough, unless he have land or rent to the value of twenty shillings a year, but that any one may put his children to school. The reason assigned is the scarcity of labourers in husbandry, in consequence of people living in *Upland* apprenticing their children.

* Blomefield's Norfolk, vol. iii. p. 571.

† Rymer, t. v., p. 44.

‡ Gurdon on Courts Baron, p. 596. Madox Formulare Anglicanum, p. 420. Barrington on Ancient Statutes, p. 278. It is said in a modern book, that villanage was very rare in Scotland, and even that no instance exists in records, of an estate sold with the labourers and their families attached to the soil.—Pinkerton's Hist. of Scotland, vol. i., p. 147. But Mr. Chalmers, in his Caledonia, has brought several proofs that this assertion is too general.

the last unequivocal testimony to the existence of villanage;* though it is highly probable that it existed in remote parts of the country some time longer.†

Reign of Henry VI.

From this general view of the English constitution, as it stood about the time of Henry VI., we must turn our eyes to the political revolutions which clouded the latter years of his reign. The minority of this prince, notwithstanding the vices and dissensions of his court, and the inglorious discomfiture of our arms in France, was not perhaps a calamitous period. The country grew more wealthy: the law was, on the whole, better observed; the power of parliament more complete and effectual than in preceding times. But Henry's weakness of understanding becoming evident as he reached manhood, rendered his reign a perpetual minority. His marriage with a princess of strong mind, but ambitious and vindictive, rather tended to weaken the government and to accelerate his downfall; a certain reverence that had been paid to the gentleness of the king's disposition being overcome by her unpopularity. By degrees Henry's natural feebleness degenerated almost into fatuity; and this unhappy condition seems to have overtaken him nearly about the time when it became an arduous task to withstand the assault in preparation against his government. This may properly introduce a great constitutional subject, to which some peculiar circumstances of our own age have imperiously directed the consideration of parliament. Though the proceedings of 1788 and 1810 are undoubtedly precedents of far more authority than any that can be derived from our ancient history, yet as the seal of the legislature has not yet been set upon this controversy, it is not perhaps altogether beyond the possibility of future discussion; and at least it cannot be uninteresting to look back on those parallel or analogous cases, by which the deliberations of parliament upon the question of regency were guided.

While the kings of England retained their continental dominions, and were engaged in the wars to which those gave birth, they were of course frequently absent from this country. Upon such occasions the administration seems at first to have devolved officially on the justiciary, as chief servant of the crown. But Henry III. began the practice of appointing lieutenants, or guardians of the realm (custodes regni), as they were more usually termed, by way of temporary substitutes. They were usually nominated by the king without consent of parliament; and their office carried with it the right of exercising all the prerogatives of the crown. It was of course determined by the king's return; and a distinct statute was necessary, in the reign of Henry V., to provide that a parliament called by the guardian of the realm during the king's absence should not be dissolved by that event.* The most remarkable circumstance attending those lieutenancies was, that they were sometimes conferred on the heir apparent during his infancy. The Black Prince, then Duke of Cornwall, was left guardian of the realm in 1339, when he was but ten years old;† and Richard his son, when still younger, in 1372, during Edward III.'s last expedition into France.‡

Historical instances of regencies:

during the absence of our kings in France:

These do not however bear a very close analogy to regencies in the strictest sense, or substitutions during the natural incapacity of the sovereign. Of such there had been several instances, before it became necessary to supply the deficiency arising from Henry's derangement. 1. At the death of John, William, earl of Pembroke assumed the title of rector regis et regni, with the consent of the loyal barons who had just proclaimed the young king, and probably conducted the government in a great measure by their advice.§ But the circumstances were too critical, and the time is too remote, to give this precedent any material weight. 2. Edward I. being in Sicily at his father's death, the nobility met at the Temple church, as we are informed by a contemporary writer, and, after making a new great seal, appointed the Archbishop of York, Edward, earl of Cornwall, and the Earl of Glocester, to be ministers and guardians of the realm; who accordingly conducted the adminis-

At the accession of Henry III.

of Edward I.

* Barrington, ubi supra, from Rymer.

† There are several later cases reported, wherein villanage was pleaded, and one of them as late as the 15th of James I.—(Noy, p. 27.) See Hargrave's argument, State Trials, vol. xx., p. 41. But these are so briefly stated, that it is difficult in general to understand them. It is obvious, however, that judgment was in no case given in favour of the plea; so that we can infer nothing as to the actual continuance of villanage.

It is remarkable, and may be deemed by some persons a proof of legal pedantry, that Sir E. Coke, while he dilates on the law of villanage, never intimates that it was become antiquated.

* 8 H. V., c. 1.

† This prince having been sent to Antwerp, six commissioners were appointed to open parliament. —Rot. Parl., 13 E. III., vol. ii., p. 107.

‡ Rymer, t. vi., p. 748. § Matt. Paris, p. 242

tration in the king's name until his return.* It is here observable, that the Earl of Cornwall, though nearest prince of the blood, was not supposed to enjoy any superior title to the regency, wherein he was associated with two other nobles. But while the crown itself was hardly acknowledged to be unquestionably hereditary, it would be strange if any notion of such a right to the regency had been entertained. 3. At the accession of Edward III.; of Edward III., then fourteen years old, the parliament, which was immediately summoned, nominated four bishops, four earls, and six barons as a standing council, at the head of which the Earl of Lancaster seems to have been placed, to advise the king in all business of government. It was an article in the charge of treason, or, as it was then styled, of accroaching royal power, against Mortimer, that he intermeddled in the king's household without the assent of this council.† They may be deemed therefore a sort of parliamentary regency, though the duration of their functions does not seem to be defined. of Richard II.; 4. The proceedings at the commencement of the next reign are more worthy of attention. Edward III. dying June 21, 1377, the keepers of the great seal next day, in absence of the chancellor beyond sea, gave it into the young king's hands before his council. He immediately delivered it to the Duke of Lancaster, and the duke to Sir Nicholas Bonde for safe custody. Four days afterward, the king in council delivered the seal to the bishop of St. Davids, who affixed it the same day to divers letters patent.‡ Richard was at this time ten years and six months old; an age certainly very unfit for the personal execution of sovereign authority. Yet he was supposed capable of reigning without the aid of a regency. This might be in virtue of a sort of magic ascribed by lawyers to the great seal, the possession of which bars all further inquiry, and renders any government legal. The practice of modern times, requiring the constant exercise of the sign manual, has made a public confession of incapacity necessary in many cases, where it might have been concealed or overlooked in earlier periods of the constitution. But though no one was invested with the office of regent, a council of twelve was named by the prelates and peers at the king's coronation, July 16, 1377, without whose concurrence no public measure was to be carried into effect. I have mentioned in another place the modifications introduced from time to time by parliament, which might itself be deemed a great council of regency during the first years of Richard.

5. The next instance is at the accession of Henry VI. This prince of Henry VI. was but nine months old at his father's death; and whether from a more evident incapacity for the conduct of government in his case than in that of Richard II., or from the progress of constitutional principles in the forty years elapsed since the latter's accession, far more regularity and deliberation were shown in supplying the defect in the executive authority. Upon the news arriving that Henry V. was dead, several lords spiritual and temporal assembled, on account of the imminent necessity, in order to preserve peace, and provide for the exercise of officers appertaining to the king. These peers accordingly issued commissions to judges, sheriffs, escheators, and others, for various purposes, and writs for a new parliament. This was opened by commission under the great seal directed to the Duke of Glocester, in the usual form, and with the king's test.* Some ordinances were made in this parliament by the Duke of Glocester as commissioner, and some in the king's name. The acts of the peers, who had taken on themselves the administration, and summoned parliament, were confirmed. On the twenty-seventh day of its session, it is entered upon the roll, that the king, "considering his tender age, and inability to direct in person the concerns of his realm, by assent of lords and commons, appoints the Duke of Bedford, or, in his absence beyond sea, the Duke of Glocester, to be protector and defender of the kingdom and English church, and the king's chief counsellor." Letters patent were made out to this effect: the appointment being however expressly during the king's pleasure. Sixteen counsellors were named in parliament to assist the protector in his administration; and their concurrence was made necessary to the removal and appointment of officers, except some inferior patronage specifically reserved to the protector. In all important business that should pass by order of council, the whole or major part were to be present; "but if it were such matter that the king

* Matt. Westmonast. ap. Brady's History of England, vol. ii., p. 1.
† Rot. Parl. vol. ii., p. 52.
‡ Rymer t. vii., p. 171

* Rot. Parl., vol. iv., p. 169.

hath been accustomed to be counselled of, that then the said lords proceed not therein without the advice of my lords of Bedford or Glocester."* A few more counsellors were added by the next parliament, and divers regulations established for their observance.†

This arrangement was in contravention of the late king's testament, which had conferred the regency on the Duke of Glocester, in exclusion of his elder brother. But the nature and spirit of these proceedings will be better understood by a remarkable passage in a roll of a later parliament; where the house of lords, in answer to a request of Glocester, that he might know what authority he possessed as protector, remind him that in the first parliament of the king,‡ "ye desired to have had ye governaunce of yis land; affermyng yat hit belonged unto you of rygzt, as well by ye mene of your birth, as by ye laste wylle of ye kyng yat was your broyer, whome God assoile; alleggyng for you such groundes and motyves as it was yought to your discretion made for your intent: whereupon, the lords spiritual and temporal assembled there in parliament, among which were there my lordes your uncles, the Bishop of Winchester that now liveth, and the Duke of Exeter, and your cousin the Earl of March that be gone to God, and of Warwick, and other in great number that now live, had great and long deliberation and advice, searched precedents of the governail of the land in time and case semblable, when kings of this land have been tender of age, took also information of the laws of the land, of such persons as be notably learned therein. and finally found your said desire not caused nor grounded in precedent, nor in the law of the land; the which the king that dead is, in his life nor might by his last will nor otherwise altre, change, nor abroge, without the assent of the three estates, nor commit or grant to any person governance or rule of this land longer than he lived; but on that other behalf, the said lords found your said desire not according with the laws of this land, and against the right and freedome of the estates of the same land. Howe were it, that it be no thought, that any such thing wittingly proceeded of your intent; and nevertheless to keep peace and tranquility, and to the intent to ease and appease you, it was advised and appointed by authority of the king, assenting the three estates of this land, that ye in absence of my lord your brother of Bedford, should be chief of the king's council, and devised unto you a name different from other counsellors, not the name of tutor, lieutenant, governor, nor of regent, nor no name that should import authority of governance of the land, but the name of protector and defensor, which importeth a personal duty of attendance to the actual defence of the land, as well against enemies outward, if case required, as against rebels inward, if any were, that God forbid; granting you therewith certain power, the which is specified and contained in an act of the said parliament, to endure as long as it liked the king. In the which if the intent of the said estates had been, that ye more power and authority should have had, more should have been expressed therein; to the which appointment, ordinance, and act, ye then agreed you as for your person, making nevertheless protestation, that it was not your intent in any wise to deroge, or do prejudice unto my lord your brother of Bedford by your said agreement, as toward any right that he would pretend or claim in the governance of this land, and as toward any pre-eminence that you might have or belong unto you as chief of council, it is plainly declared in the said act and articles, subscribed by my said Lord of Bedford, by yourself, and the other lords of the council. But as in parliament to which ye be called upon your faith and ligeance as Duke of Glocester, as other lords be, and not otherwise, we know no power nor authority that ye have, other than ye as Duke of Glocester should have, the king being in parliament, at years of mest discretion: We marvailing with all our hearts that considering the open declaration of the authority and power belonging to my Lord of Bedford and to you in his absence, and also to the king's council, subscribed purely and simply by my said Lord of Bedford, and by you, that you should in any wise be stirred or moved not to content you therewith or to pretend you any other: Namely considering that the king, blessed be our lord, is sith the time of the said power granted unto you, far gone and grown in person, in wit, and under

* Rot. Parl., vol. iv., p. 174, 176. † Id., p. 201.

‡ I follow the orthography of the roll, which I hope will not be inconvenient to the reader. Why this orthography, from obsolete and difficult, so frequently becomes almost modern, as will appear in the course of these extracts, I cannot conjecture. The usual irregularity of ancient spelling is hardly sufficient to account for such variations; but if there be any error, it belongs to the superintendents of that publication, and is not mine.

standing, and like with the grace of God to occupy his own royal power within few years: and forasmuch considering the things and causes abovesaid, and other many that long were to write, We lords aforesaid pray, exhort, and require you, to content you with the power above said and declared, of the which my lord your brother of Bedford, the king's eldest uncle, contented him; and that ye none larger power desire, will, nor use; giving you this that is aboven written for our answer to your foresaid demand, the which we will dwell and abide with, withouten variance or changing. Over this beseeching and praying you in our most humble and lowly wise, and also requiring you in the king's name, that ye, according to the king's commandment, contained in his writ sent unto you in that behalf, come to this his present parliament, and intend to the good effect and speed of matters to be demesned and treted in the same, like as of right ye owe to do."*

It is evident that this plain, or rather rude address to the Duke of Glocester, was dictated by the prevalence of Cardinal Beaufort's party in council and parliament. But the transactions in the former parliament are not unfairly represented; and comparing them with the passage extracted above, we may perhaps be entitled to infer: 1. That the king does not possess any constitutional prerogative of appointing a regent during the minority of his successor; and 2. That neither the heir presumptive, nor any other person, is entitled to exercise the royal prerogative during the king's infancy (or, by parity of reasoning, his infirmity), nor to any title that conveys them; the sole right of determining the persons by whom, and fixing the limitations under which, the executive government shall be conducted in the king's name and behalf, devolving upon the great council of parliament.

The expression used in the lords' address to the Duke of Glocester relative to the young king, that he was far gone and grown in person, wit, and understanding, was not thrown out in mere flattery. In two years the party hostile to Glocester's influence had gained ground enough to abrogate his office of protector, leaving only the honorary title of chief counsellor.† For this the king's coronation, at eight years of age, was thought a fair pretence; and undoubtedly the loss of that exceedingly limited authority which had been delegated to the protector could not have impaired the strength of government. This was conducted as before by a selfish and disunited council: but the king's name was sufficient to legalize their measures, nor does any objection appear to have been made in parliament to such a mockery of the name of monarchy.

In the year 1454, the thirty-second of Henry's reign, his unhappy malady, transmitted perhaps from his maternal grandfather, assumed so decided a character of derangement or imbecility, that parliament could no longer conceal from itself the necessity of a more efficient ruler. This assembly, which had been continued by successive prorogations for nearly a year, met at Westminster on the 14th of February, when the session was opened by the Duke of York as king's commissioner. Kemp, archbishop of Canterbury and chancellor of England, dying soon afterward, it was judged proper to acquaint the king at Windsor by a deputation of twelve lords with this and other subjects concerning his government. In fact, perhaps this was a pretext chosen in order to ascertain his real condition. These peers reported to the lords' house two days afterward, that they had opened to his majesty the several articles of their message, but "could get no answer ne sign for no prayer ne desire," though they repeated their endeavours at three different interviews. This report, with the instruction on which it was founded, was, at their prayer, entered of record in parliament. Upon so authentic a testimony of their sovereign's infirmity, the peers, adjourning two days for solemnity or deliberation, "elected and nominated Richard, duke of York, to be protector and defender of the realm of England during the king's pleasure." The duke, protesting his insufficiency, requested, "that in this present parliament, and by authority thereof, it be enacted, that of yourself and of your ful and mere disposition, ye desire, name, and call me to the said name and charge and that of any presumption of myself, I take them not upon me, but only of the due and humble obeisance that I owe to do unto the king, our most dread and sovereign lord, and to you the peerage of this land, in whom, by the occasion of the infirmity of our said sovereign lord, resteth the exercise of his authority, whose noble commandments I am as ready to perform and obey as any of his liegeman

Henry's mental derangemen

Duke of York made protector.

* Rot. Parl., 6 H. VI., vol. iv., p. 326.
† Id. 8 H. VI., p. 336.

alive, and that at such time as it shall please our blessed Creator to restore his most noble person to healthful disposition, it shall like you so to declare and notify to his good grace" To this protestation the lords answered, that for his and their discharge an act of parliament should be made, conformably to that enacted in the king's infancy, since they were compelled by an equal necessity again to choose and name a protector and defender. And to the Duke of York's request to be informed how far the power and authority of his charge should extend, they replied, that he should be chief of the king's council, and "devised therefore to the said duke a name different from other counsellors, not the name of tutor, lieutenant, governor, nor of regent, nor no name that shall import authority of governance of the land; but the said name of protector and defensor;" and so forth, according to the language of their former address to the Duke of Glocester. An act was passed accordingly, constituting the Duke of York protector of the church and kingdom, and chief counsellor of the king during the latter's pleasure; or until the Prince of Wales should attain years of discretion, on whom the said dignity was immediately to devolve. The patronage of certain spiritual benefices was reserved to the protector, according to the precedent of the king's minority, which parliament was resolved to follow in every particular.*

It may be conjectured, by the provision made in favour of the Prince of Wales, then only two years old, that the king's condition was supposed to be beyond hope of restoration. But in about nine months he recovered sufficient speech and recollection to supersede the Duke of York's protectorate,† The succeeding transactions are matter of familiar, though not, perhaps, very perspicuous history. The king was a prisoner in his enemies' hands after the affair at St. Albans,‡ when parliament met in July, 1455. In this session little was done except renewing the strongest oaths of allegiance to Henry and his family. But the two houses meeting again after a prorogation to November 12, during which time the Duke of York had strengthened his party, and was appointed by commission the king's lieutenant to open the parliament a proposition was made by the commons, that "whereas the king had deputed the Duke of York as his commissioner to proceed in this parliament, it was thought by the commons, that if the king hereafter could not attend to the protection of the country, an able person should be appointed protector, to whom they might have recourse for redress of injuries, especially as great disturbances had lately arisen in the west through the feuds of the Earl of Devonshire and Lord Bonvile."* The Archbishop of Canterbury answered for the lords, that they would take into consideration what the commons had suggested. Two days afterward, the latter appeared again with a request conveyed nearly in the same terms. Upon their leaving the chamber, the archbishop, who was also chancellor, moved the peers to answer what should be done in respect of the request of the commons; adding that, "it is understood that they will not further proceed in matters of parliament to the time that they have answer to their desire and request." This naturally ended in the reappointment of the Duke of York to his charge of protector. The commons indeed were determined to bear no delay. As if ignorant of what had been resolved in consequence of their second request, they urged it a third time on the next day of meeting; and received for answer that "the king our said sovereign lord, by the advice and assent of his lords spiritual and temporal being in this present parliament, had named and desired the Duke of York to be protector and defensor of this land." It is worthy of notice, that in these words, and indeed in effect, as appears by the whole transaction, the house of peers assumed an exclusive right of choosing the protector, though in the act passed to ratify their election, the commons' assent, as a matter of course, is introduced. The last year's precedent was followed in the present instance, excepting a remarkable deviation; instead of the words "during the king's pleas-

* Rot. Parl., vol. v., p. 241.

† Paston Letters, vol. i., p. 81. The proofs of sound mind given in this letter are not very decisive, but the wits of sovereigns are never weighed in golden scales.

‡ This may seem an improper appellation for what is usually termed a battle, wherein 5000 men are said to have fallen. But I rely here upon my faithful guide, the Paston Letters, p. 100, one of which, written immediately after the engagement, says that only six score were killed. Surely this testimony outweighs a thousand ordinary chroniclers And the nature of the action, which was a sudden attack on the town of St. Albans, without any pitched combat, renders the larger number improbable. Whethamstede, himself abbot of St. Albans at the time, makes the Duke of York's army but 3000 fighting men, p. 352.

* See some account of these in Paston Letters, vol. i., p. 114.

ure," the duke was to hold his office "until he should be discharged of it by the Lords in parliament."*

This extraordinary clause, and the slight allegations on which it was thought fit to substitute a vicegerent for the reigning monarch, are sufficient to prove, even if the common historians were silent, that whatever passed as to this second protectorate of the Duke of York was altogether of a revolutionary complexion. In the actual circumstances of civil blood already spilled and the king in captivity, we may justly wonder that so much regard was shown to the regular forms and precedents of the constitution. But the duke's natural moderation will account for part of this, and the temper of the lords for much more. That assembly appears for the most part to have been faithfully attached to the house of Lancaster. The partisans of Richard were found in the commons and among the populace. Several months elapsed after the victory of St. Albans, before an attempt was thus made to set aside a sovereign, not labouring, so far as we know, under any more notorious infirmity than before. It then originated in the commons, and seems to have received but an unwilling consent from the upper house. Even in constituting the Duke of York protector over the head of Henry, whom all men despaired of ever seeing in a state to face the dangers of such a season, the lords did not forget the rights of his son. By this latter instrument, as well as by that of the preceding year, the duke's office was to cease upon the Prince of Wales arriving at the age of discretion.

Duke of York's claim to the crown.

But what had been long propagated in secret, soon became familiar to the public ear; that the Duke of York laid claim to the throne. He was unquestionably heir general of the royal line, through his mother, Anne, daughter of Roger Mortimer, earl of March, son of Philippa, daughter of Lionel, duke of Clarence, third son of Edward III. Roger Mortimer's eldest son, Edmund, had been declared heir presumptive by Richard II.; but his infancy during the revolution that placed Henry IV. on the throne had caused his pretensions to be passed over in silence. The new king, however, was induced, by a jealousy natural to his situation, to detain the Earl of March in custody. Henry V. restored his liberty; and though he had certainly connived for a while at the conspiracy planned by his brother-in-law the Earl of Cambridge and Lord Scrop of Masham to place the crown on his head, that magnanimous prince gave him a free pardon, and never testified any displeasure. The present Duke of York was honoured by Henry VI. with the highest trusts in France and Ireland; such as Beaufort and Glocester could never have dreamed of conferring on him, if his title to the crown had not been reckoned obsolete. It has been very pertinently remarked, that the crime perpetrated by Margaret and her counsellors in the death of the Duke of Glocester was the destruction of the house of Lancaster.* From this time the Duke of York, next heir in presumption while the king was childless, might innocently contemplate the prospect of royalty; and when such ideas had long been passing through his mind, we may judge how reluctantly the birth of Prince Edward, nine years after Henry's marriage, would be admitted to disturb them. The queen's administration unpopular, careless of national interests, and partial to his inveterate enemy, the Duke of Somerset;† the king incapable of exciting fear or respect; himself conscious of powerful alliances and universal favour; all these circumstances combined could hardly fail to nourish these opinions of hereditary right, which he must have imbibed from his infancy.

The Duke of York preserved through the critical season of rebellion such moderation and humanity, that we may pardon him that bias in favour of his own pretensions to which he became himself a victim. Margaret perhaps, by her sanguinary violence in the Coventry parliament of 1460, where the duke and all his adherents were attainted, left him not the choice of remaining a subject with impunity. But with us, who are to weigh these ancient factions in the balance of wisdom and justice, there should be no hesitation in deciding that the house of Lancaster were lawful sovereigns of England. I am indeed astonished, that not only such historians as Carte, who wrote undisguisedly upon a Jacobite system, but even men of juster principles, have been inadvertent enough to mention the right of the house of York. If the original consent of the nation, if three descents of the crown, if repeated acts of parliament, if oaths of allegiance from

* Rot. Parl., vol. v., p. 284—290.

* Hall, p. 210.

† The ill-will of York and the queen began as early as 1449, as we learn from an unequivocal testimony, a letter of that date in the Paston collection. vol i., p. 26.

the whole kingdom, and more particularly from those who now advanced a contrary pretension, if undisturbed, unquestioned possession during sixty years could not secure the reigning family against a mere defect in their genealogy, when were the people to expect tranquillity? Sceptres were committed, and governments were instituted, for public protection and public happiness, not certainly for the benefit of rulers or for the security of particular dynasties. No prejudice has less in its favour, and none has been more fatal to the peace of mankind, than that which regards a nation of subjects as a family's private inheritance. For, as this opinion induces reigning princes and their courtiers to look on the people as made only to obey them, so when the tide of events has swept them from their thrones, it begets a fond hope of restoration, a sense of injury and of imprescriptible rights, which give the show of justice to fresh disturbances of public order and rebellions against established authority. Even in cases of unjust conquest, which are far stronger than any domestic revolution, time heals the injury of wounded independence, the forced submission to a victorious enemy is changed into spontaneous allegiance to a sovereign, and the laws of God and nature enjoin the obedience that is challenged by reciprocal benefits. But far more does every national government, however violent in its origin, become legitimate, when universally obeyed and justly exercised, the possession drawing after it the right; not certainly that success can alter the moral character of actions, or privilege usurpation before the tribunal of human opinion, or in the pages of history, but that the recognition of a government by the people is the binding pledge of their allegiance so long as its corresponding duties are fulfilled.* And thus the law of England has been held to annex the subject's fidelity to the reigning monarch, by whatever title he may have ascended the throne, and whoever else may be its claimant.† But the statute of 11th of Henry VII., c. 1, has furnished an unequivocal commentary upon this principle; when, alluding to the condemnations and forfeitures by which those alternate successes of the white and red roses had almost exhausted the noble blood of England, it enacts that "no man for doing truth and faithful service to the king for the time being, be convict, or attaint of high treason, nor of other offences, by act of parliament or otherwise."

War of the Lancastrians and Yorkists

Though all classes of men and all parts of England were divided into factions by this unhappy contest, yet the strength of the Yorkists lay in London and the neighbouring counties, and generally among the middling and lower people. And this is what might naturally be expected. For notions of hereditary right take easy hold of the populace, who feel an honest sympathy for those whom they consider as injured; while men of noble birth and high station have a keener sense of personal duty to their sovereign, and of the baseness of deserting their allegiance. Notwithstanding the wide spreading influence of the Nevils, most of the nobility were well affected to the reigning dynasty. We have seen how reluctantly they acquiesced in the second protectorate of the Duke of York, after the battle of St. Albans. Thirty-two temporal peers took an oath of fealty to Henry and his issue in the Coventry parliament of 1460, which attainted the Duke of York and the earls of Warwick and Salisbury.* And, in the memorable circumstances of the duke's claim personally made in parliament, it seems manifest that the lords complied not only with hesitation, but unwillingness; and in fact testified their respect and duty for Henry by confirming the crown to him during his life.† The rose of Lancaster blushed upon the banners of the Stafords, the Percies, the Veres, the Hollands, and the Courtneys. All these illustrious families lay crushed for a time under the ruins of their party. But the course of fortune, which has too great a mastery over crowns and sceptres to be controlled by men's affections, invested

* Upon this great question the fourth discourse in Sir Michael Foster's Reports ought particularly to be read. Strange doctrines have been revived lately, and though not exactly referred to the constitution of this country, yet, as general principles, easily applicable to it; which, a century since, would have tended to shake the present family in the throne.

† Hale's Pleas of the Crown, vol. i., p. 61, 101 (edit 1736).

* Rot. Parl., vol. v., p. 351.

† Rot. Parl., p. 375. This entry in the roll is highly interesting and important. It ought to be read in preference to any of our historians. Hume, who drew from inferior sources, is not altogether accurate. Yet one remarkable circumstance, told by Hall and other chroniclers, that the Duke of York stood by the throne, as if to claim it, though omitted entirely in the roll, is confirmed by Whethamstede, abbot of St. Albans, who was probably then present (p. 484, edit. Hearne). This shows that we should only doubt and not reject, unless upon real grounds of suspicion, the assertions of secondary writers.

Edward IV. with a possession, which the general consent of the nation both sanctioned and secured. This was effected in no slight degree by the furious spirit of Margaret, who began a system of extermination by acts of attainder, and execution of prisoners, that created abhorrence, though it did not prevent imitation. And the barbarities of her northern army, whom she led towards London after the battle of Wakefield, lost the Lancastrian cause its former friends,* and might justly convince reflecting men, that it were better to risk the chances of a new dynasty, than trust the kingdom to an exasperated faction.

A period of obscurity and confusion ensues, during which we have as little insight into constitutional as general history. There are no contemporary chroniclers of any value, and the rolls of parliament, by whose light we have hitherto steered, become mere registers of private bills, or of petitions relating to commerce. The reign of Edward IV. is the first during which no statute was passed for the redress of grievances or maintenance of the subject's liberty. Nor is there, if I am correct, a single petition of this nature upon the roll. Whether it were that the commons had lost too much of their ancient courage to present any remonstrances, or that a wilful omission has vitiated the record, is hard to determine; but we certainly must not imagine, that a government cemented with blood poured on the scaffold as well as in the field, under a passionate and unprincipled sovereign, would afford no scope for the just animadversion of parliament.† The reign of Edward IV. was a reign of terror. One half of the noble families had been thinned by proscription; and though generally restored in blood by the reversal of their attainders, a measure certainly deserving of much approbation, were still under the eyes of vigilant and inveterate enemies. The opposite faction would be cautious how they resisted a king of their own creation, while the hopes of their adversaries were only dormant. And indeed, without relying on this supposition, it is commonly seen, that when temporary circumstances have given a king the means of acting in disregard of his subjects' privileges, it is a very difficult undertaking for them to recover a liberty which has no security so effectual as habitual possession.

Edward IV.

Besides the several proceedings against the Lancastrian party, which might be extenuated by the common pretences, retaliation of similar proscriptions, security for the actual government, or just punishment of rebellion against a legitimate heir, there are several reputed instances of violence and barbarity in the reign of Edward IV., which have not such plausible excuses. Every one knows the common stories of the citizen who was attainted of treason for an idle speech that he would make his son heir to the crown, the house where he dwelt; and of Thomas Burdett who wished the horns of his stag in the belly of him who had advised the king to shoot it. Of the former I can assert nothing, though I do not believe it to be accurately reported. But certainly the accusation against Burdett, however iniquitous, was not confined to these frivolous words, which indeed do not appear in his endictment,* or in a passage relative to his conviction in the roll of parliament. Burdett was a servant and friend of the Duke of Clarence, and sacrificed as a preliminary victim. It was an article of charge against Clarence that he had attempted to persuade the people that "Thomas Burdett his servant, which was lawfully and truly attainted of treason, was wrongfully put to death."† There could indeed be no more oppressive usage inflicted upon meaner persons than this attainder of the Duke of Clarence, an act for which a brother could not be pardoned had he been guilty; and which deepens the shadow of a tyrannical age, if, as it seems, his offence towards Edward was but levity and rashness.

* The abbey of St. Albans was stripped by the queen and her army after the second battle fought at that place, Feb. 17, 1461; which changed Whethamstede, the abbot and historiographer, from a violent Lancastrian into a Yorkist. His change of party is quite sudden, and amusing enough. See too the Paston Letters, vol. i., p. 206. Yet the Paston family were originally Lancastrian, and returned to that side in 1470.

† There are several instances of violence and oppression apparent on the rolls during this reign, but not proceeding from the crown. One of a remarkable nature, vol. v., p. 173, was brought forward to throw an odium on the Duke of Clarence, who had been concerned in it. Several passages indicate the character of the Duke of Gloucester.

* See in Cro. Car. 120, the endictment against Burdett for compassing the king's death and for that purpose conspiring with Stacie and Blake to calculate his nativity and his son's, ad sciendum quando iidem rex et Edwardus ejus filius morientur: Also for the same end dispersing divers rhymes and ballads de murmurationibus, seditionibus et proditoriis excitationibus, factas et fabricatas apud Holbourn, to the intent that the people might withdraw their love from the king and desert him ac erga ipsum regem levarent, ad finalem destructionem ipsorum regis ac domini principis, &c.

† Rot. Parl., vol. i., p. 193.

But whatever acts of injustice we may attribute, from authority or conjecture, to Edward's government, it was very far from being unpopular. His love of pleasure, his affability, his courage, and beauty, gave him a credit with his subjects which he had no real virtue to challenge. This restored him to the throne, even against the prodigious influence of Warwick, and compelled Henry VII. to treat his memory with respect, and acknowledge him as a lawful king.* The latter years of his reign were passed in repose at home after scenes of unparalleled convulsions, and in peace abroad after more than a century of expensive warfare. His demands of subsidy were therefore moderate, and easily defrayed by a nation who were making rapid advances towards opulence. According to Sir John Fortescue, nearly one fifth of the whole kingdom had come to the king's hand by forfeiture, at some time or other since the commencement of his reign.* Many indeed of these lands had been restored, and others lavished away in grants, but the surplus revenue must still have been considerable.

Edward IV. was the first who practised a new method of taking his subjects' money without consent of parliament, under the plausible name of benevolences. These came in place of the still more plausible loans of former monarchs, and were principally levied on the wealthy traders. Though no complaint appears in the parliamentary records of his reign, which, as has been observed, complain of nothing, the illegality was undoubtedly felt and resented. In the remarkable address to Richard by that tumultuary meeting which invited him to assume the crown, we find, among general assertions of the state's decay through misgovernment, the following strong passage: "For certainly we be determined rather to aventure and committe us to the perill of owre lyfs and jopardie of deth, than to lyve in such thraldome and bondage as we have lyved long tyme heretofore oppressed and injured by extortions and newe impositions, ayenst the lawes of God and man, and the libertie, old policie, and laws of this realme, whereyn every Englishman is inherited."† Accordingly, in Richard III.'s only parliament, an act was passed, which, after reciting in the strongest terms the grievances lately endured, abrogates and annuls for ever all exactions under the name of benevolence.‡ The liberties of this country were at least not directly impaired by the usurpation of Richard. But from an act so deeply tainted with moral guilt, as well as so violent in all its circumstances, no substantial benefit was likely to spring. Whatever difficulty there may be, and I confess it is not easy to be surmounted, in deciding upon the fate of Richard's nephews after they were immured in the Tower, the more public parts of the transaction bear unequivocal testimony to his ambitious usurpation. It would therefore be foreign to the purpose of this chapter to dwell upon his assumption of the regency, or upon the sort of election, however curious and remarkable, which gave a pretended authority to his usurpation of the throne. Neither of

* The rolls of Henry VII.'s first parliament are full of an absurd confusion in thought and language, which is rendered odious by the purposes to which it is applied. Both Henry VI. and Edward IV. are considered as lawful kings: except in one instance, where Alan Cotterell, petitioning for the reversal of his attainder, speaks of Edward "late called Edward IV." (vol. vi., p. 290). But this is only the language of a private Lancastrian. And Henry VI. passes for having been king during his short restoration in 1470, when Edward had been nine years upon the throne. For the Earl of Oxford is said to have been attainted "for the true allegiance and service he owed and did to Henry VI., at Barnet field and otherwise" (p. 281). This might be reasonable enough on the true principle that allegiance is due to a king *de facto;* if indeed we could determine who was the king de facto on the morning of the battle of Barnet. But this principle was not fairly recognised. Richard III. is always called, "in deed and not in right, King of England." Nor was this merely founded on his usurpation as against his nephew. For that unfortunate boy is little better treated, and in the act of resumption, 1 H. VII., while Edward IV. is styled "late king," appears only with the denomination of "Edward his son, late called Edward V.," p. 336. Who then was king after the death of Edward IV.? And was his son really illegitimate, as a usurping uncle pretended? Or did the crime of Richard, though punished in him, enure to the benefit of Henry? These were points which, like the fate of the young princes in the Tower, he chose to wrap in discreet silence. But the first question he seems to have answered in his own favour. For Richard himself, Howard, duke of Norfolk, Lord Lovel, and some others, are attainted (p. 276), for 'traiterously intending, compassing, and imagining' the death of Henry; of course before or at the battle of Bosworth; and while his right, unsupported by possession, could have rested only on an hereditary title, which it was an insult to the nation to prefer. These monstrous proceedings explain the necessity of that conservative statute to which I have already alluded, which passed in the eleventh year of his reign, and afforded as much security for men following the plain line of rallying round the standard of their country as mere law can offer. There is some extraordinary reasoning upon this act in Carte's History, vol. ii., p. 844, for the purpose of proving that the adherents of George II. would not be protected by it on the restoration of the true blood.

* Diff. of Absolute and Limited Monarchy, p. 83

† Rot. Parl., vol. vi., p. 241. ‡ 1 R. III., c. 2

these has ever been alleged by any party in the way of constitutional precedent.

Conclusion.

At this epoch I terminate these inquiries into the English constitution; a sketch very imperfect I fear and unsatisfactory, but which may at least answer the purpose of fixing the reader's attention on the principal objects, and of guiding him to the purest fountains of constitutional knowledge. From the accession of the house of Tudor a new period is to be dated in our history; far more prosperous in the diffusion of opulence and the preservation of general order than the preceding, but less distinguished by the spirit of freedom and jealousy of tyrannical power. We have seen, through the twilight of our Anglo-Saxon records, a form of civil policy established by our ancestors, marked, like the kindred governments of the continent, with aboriginal Teutonic features; barbarous indeed, and insufficient for the great ends of society, but capable and worthy of the improvement it has received, because actuated by a sound and vital spirit, the love of freedom and of justice. From these principles arose that venerable institution, which none but a free and simple people could have conceived, trial by peers; an institution common in some degree to other nations, but which, more widely extended, more strictly retained, and better modified among ourselves, has become perhaps the first, certainly among the first, of our securities against arbitrary government. We have seen a foreign conqueror and his descendants trample almost alike upon the prostrate nation, and upon those who had been companions of their victory, introduce the servitudes of feudal law with more than their usual rigour, and establish a large revenue by continual precedents upon a system of universal and prescriptive extortion. But the Norman and English races, each unfit to endure oppression, forgetting their animosities in a common interest, enforce by arms the concession of a great charter of liberties. Privileges, wrested from one faithless monarch, are preserved with continual vigilance against the machinations of another; the rights of the people become more precise, and their spirit more magnanimous, during the long reign of Henry III. With greater ambition and greater abilities than his father, Edward I. attempts in vain to govern in an arbitrary manner, and has the mortification of seeing his prerogative fettered by still more important limitations. The great council of the nation is opened to the representatives of the commons. They proceed by slow and cautious steps to remonstrate against public grievances, to check the abuses of administration, and sometimes to chastise public delinquency in the officers of the crown. A number of remedial provisions are added to the statutes; every Englishman learns to remember that he is the citizen of a free state, and to claim the common law as his birthright, even though the violence of power should interrupt its enjoyment. It were a strange misrepresentation of history to assert that the constitution had attained any thing like a perfect state in the fifteenth century; but I know not whether there are any essential privileges of our countrymen, any fundamental securities against arbitrary power, so far as they depend upon positive institution, which may not be traced to the time when the house of Plantagenet filled the English throne.

CHAPTER IX.

ON THE STATE OF SOCIETY IN EUROPE DURING THE MIDDLE AGES.

PART I.

Introduction.—Decline of Literature in the latter period of the Roman Empire.—Its Causes.—Corruption of the Latin Language.—Means by which it was effected.—Formation of new Languages.—General Ignorance of the Dark Ages.—Scarcity of Books.—Causes that prevented the total Extinction of Learning.—Prevalence of Superstition and Fanaticism.—General Corruption of Religion.—Monasteries—their Effects.—Pilgrimages.—Love of Field Sports.—State of Agriculture—of Internal and Foreign Trade down to the End of the Eleventh Century.—Improvement of Europe dated from that Age.

It has been the object of every preceding chapter of this work either to trace the civil revolutions of states during the period of the middle ages, or to investigate, with rather more minute attention their political institutions. There remains a large tract to be explored, if we

would complete the circle of historical information, and give to our knowledge that copiousness and clear perception which arise from comprehending a subject under numerous relations. The philosophy of history embraces far more than the wars and treaties, the factions and cabals of common political narration; it extends to whatever illustrates the character of the human species in a particular period, to their reasonings and sentiments, their arts and industry. Nor is this comprehensive survey merely interesting to the speculative philosopher; without it, the statesman would form very erroneous estimates of events, and find himself constantly misled in any analogical application of them to present circumstances. Nor is it an uncommon source of error to neglect the general signs of the times, and to deduce a prognostic from some partial coincidence with past events, where a more enlarged comparison of all the facts that ought to enter into the combination would destroy the whole parallel The philosophical student, however, will not follow the antiquary into his minute details; and though it is hard to say what may not supply matter for a reflecting mind, there is always some danger of losing sight of grand objects in historical disquisition, by too laborious a research into trifles. I may possibly be thought to furnish, in some instances, an example of the error I condemn. But in the choice and disposition of topics to which the present chapter relates, some have been omitted on account of their comparative insignificance, and others on account of their want of connexion with the leading subject. Even of those treated I can only undertake to give a transient view; and must bespeak the reader's candour to remember, that passages which, separately taken, may often appear superficial, are but parts of the context of a single chapter, as the chapter itself is of an entire work.

The Middle Ages, according to the division I have adopted, comprise about one thousand years, from the invasion of France by Clovis to that of Naples by Charles VIII. This period, considered as to the state of society, has been esteemed dark through ignorance, and barbarous through poverty and want of refinement. And although this character is much less applicable to the two last centuries of the period than to those which preceded its commencement, yet we cannot expect to feel, in respect of ages at best imperfectly civilized and slowly progressive, that interest which attends a more perfect development of human capacities, and more brilliant advances in improvement. The first moiety indeed of these ten ages is almost absolutely barren, and presents little but a catalogue of evils. The subversion of the Roman empire, and devastation of its provinces by barbarous nations, either immediately preceded, or were coincident with the commencement of the middle period. We begin in darkness and calamity; and though the shadows grow fainter as we advance, yet we are to break off our pursuit as the morning breathes upon us, and the twilight reddens into the lustre of day.

Decline of learning in Roman empire.

No circumstance is so prominent on the first survey of society during the earlier centuries of this period as the depth of ignorance in which it was immersed; and as from this, more than any single cause, the moral and social evils which those ages experienced appear to have been derived and perpetuated, it deserves to occupy the first place in the arrangement of our present subject. We must not altogether ascribe the ruin of literature to the barbarian destroyers of the Roman empire. So gradual, and apparently so irretrievable a decay, had long before spread over all liberal studies, that it is impossible to pronounce whether they would not have been almost equally extinguished if the august throne of the Cesars had been left to moulder by its intrinsic weakness. Under the paternal sovereignty of Marcus Aurelius, the approaching declension of learning might be scarcely perceptible to an incurious observer. There was much indeed to distinguish his times from those of Augustus; much lost in originality of genius, in correctness of taste, in the masterly conception and consummate finish of art, in purity of the Latin, and even of the Greek language. But there were men who made the age famous, grave lawyers, judicious historians, wise philosophers; the name of learning was honourable, its professors were encouraged: and along the vast surface of the Roman empire there was perhaps a greater number, whose minds were cultivated by intellectual discipline, than under the more brilliant reign of the first emperor.

Its causes

It is not, I think, very easy to give a perfectly satisfactory solution of the rapid downfall of literature between the ages of Antonine and of Diocletian. Perhaps the prosperous condition of the empire from Trajan to Mar

cus Aurelius, and the patronage which those good princes bestowed on letters, gave an artificial health to them for a moment, and suspended the operation of a disease which had already begun to undermine their vigour. Perhaps the intellectual energies of mankind can never remain stationary; and a nation that ceases to produce original and inventive minds, born to advance the landmarks of knowledge or skill, will recede from step to step, till it loses even the secondary merits of imitation and industry. During the third century, not only there were no great writers, but even few names of indifferent writers have been recovered by the diligence of modern inquiry.* Law neglected, philosophy perverted till it became contemptible, history nearly silent, the Latin tongue growing rapidly barbarous, poetry rarely and feebly attempted, art more and more vitiated; such were the symptoms by which the age previous to Constantine announced the decline of human intellect. If we cannot fully account for this unhappy change, as I have observed, we must, however, assign much weight to the degradation of Rome and Italy in the system of Severus and his successors, to the admission of barbarians into the military and even civil dignities of the empire, to the discouraging influence of provincial and illiterate sovereigns, and to the calamities which followed for half a century the first invasion of the Goths and the defeat of Decius. To this sickly condition of literature the fourth century supplied no permanent remedy. If under the house of Constantine the Roman world suffered rather less from civil warfare or barbarous invasions than in the preceding age, yet every other cause of decline just enumerated prevailed with aggravated force; and the fourth century set in storms, sufficiently destructive in themselves, and ominous of those calamities which humbled the majesty of Rome at the commencement of the ensuing period, and overwhelmed the Western Empire in absolute and final ruin before its termination.

The diffusion of literature is perfectly distinguishable from its advancement, and whatever obscurity we may find in explaining the variations of the one, there are a few simple causes which seem to account for the other. Knowledge will be spread over the surface of a nation in proportion to the facilities of education, to the free circulation of books, to the emoluments and distinctions which literary attainments are found to produce, and still more to the reward which they meet in the general respect and applause of society. This cheering incitement, the genial sunshine of approbation, has at all times promoted the cultivation of literature in small republics rather than large empires, and in cities compared with the country. If these are the sources which nourish literature, we should naturally expect that they must have become scanty or dry when learning languishes or expires. Accordingly, in the later ages of the Roman empire, a general indifference towards the cultivation of letters became the characteristic of its inhabitants. Laws were indeed enacted by Constantine, Julian, Theodosius, and other emperors, for the encouragement of learned men and the promotion of liberal education. But these laws, which would not perhaps have been thought necessary in better times, were unavailing to counteract the lethargy of ignorance in which even the native citizens of the empire were contented to repose. This alienation of men from their national literature may doubtless be imputed, in some measure, to its own demerits. A jargon of mystical philosophy, half fanaticism and half imposture, a barren and inflated eloquence, a frivolous philology, were not among those charms of wisdom by which man is to be diverted from pleasure or aroused from indolence.

In this temper of the public mind, there was little probability that new compositions of excellence would be produced, and much doubt whether the old would be preserved. Since the invention of printing, the absolute extinction of any considerable work seems a danger too improbable for apprehension. The press pours forth in a few days a thousand volumes, which scattered, like seed in the air, over the republic of Europe, could hardly be destroyed without the extirpation of its inhabitants. But in the times of antiquity, manuscripts were copied with cost, labour, and delay; and if the diffusion of knowledge be measured by the multiplication of books, no unfair standard, the most golden ages of ancient learning could never bear the least comparison with the three last centuries. The destruction of a few libraries by accidental fire, the desolation of a few prov-

* The authors of Histoire Littéraire de la France, t. i., can only find three writers of Gaul, no inconsiderable part of the Roman empire, mentioned upon any authority: two of whom are now lost. In the preceding century the number was considerably greater

mees by unsparing and illiterate barbarians, might annihilate every vestige of an author, or leave a few scattered copies, which, from the public indifference, there was no inducement to multiply, exposed to similar casualties in succeeding times.

We are warranted by good authorities to assign, as a collateral cause of this irretrievable revolution, the neglect of heathen literature by the Christian church. I am not versed enough in ecclesiastical writers to estimate the degree of this neglect; nor am I disposed to deny that the mischief was beyond recovery before the accession of Constantine. From the primitive ages, however, it seems that a dislike of pagan learning was pretty general among Christians. Many of the fathers undoubtedly were accomplished in liberal studies, and we are indebted to them for valuable fragments of authors whom we have lost. But the literary character of the church is not to be measured by that of its more illustrious leaders. Proscribed and persecuted, the early Christians had not perhaps access to the public schools, nor inclination to studies which seemed, very excusably, uncongenial to the character of their profession. Their prejudices, however, survived the establishment of Christianity. The fourth council of Carthage, in 398, prohibited the reading of secular books by bishops. Jerome plainly condemns the study of them, except for pious ends. All physical science, especially, was held in avowed contempt, as inconsistent with revealed truths. Nor do there appear to have been any canons made in favour of learning, or any restriction on the ordination of persons absolutely illiterate.* There was, indeed, abundance of what is called theological learning displayed in the controversies of the fourth and fifth centuries. And those who admire such disputations may consider the principal champions in them as contributing to the glory, or at least retarding the decline of literature. But I believe rather that polemical disputes will be found not only to corrupt the genuine spirit of religion, but to degrade and contract the faculties. What keenness and subtlety these may sometimes acquire by such exercise is more like that worldly shrewdness we see in men whose trade it is to outwit their neighbours, than the clear and calm discrimination of philosophy. However this may be, it cannot be doubted that the controversies agitated in the church during these two centuries must have diverted studious minds from profane literature, and narrowed more and more the circle of that knowledge which they were desirous to attain.

The torrent of irrational superstitions which carried all before it in the fifth century, and the progress of ascetic enthusiasm, had an influence still more decidedly inimical to learning. I cannot indeed conceive any state of society more adverse to the intellectual improvement of mankind, than one which admitted of no middle line between gross dissoluteness and fanatical mortification. An equable tone of public morals, social and humane, verging neither to voluptuousness nor austerity, seems the most adapted to genius, or at least to letters, as it is to individual comfort and national prosperity. After the introduction of monkery and its unsocial theory of duties, the serious and reflecting part of mankind, on whom science most relies, were turned to habits which, in the most favourable view, could not quicken the intellectual energies; and it might be a difficult question, whether the cultivators and admirers of useful literature were less likely to be found among the profligate citizens of Rome and their barbarian conquerors, or the melancholy recluses of the wilderness.

Such therefore was the state of learning before the subversion of the Western Empire. And we may form some notion how little probability there was of its producing any excellent fruits, even if that revolution had never occurred, by considering what took place in Greece during the subsequent ages; where, although there was some attention shown to preserve the best monuments of antiquity, and diligence in compiling from them, yet no one original writer of any superior merit arose, and learning, though plunged but for a short period into mere darkness, may be said to have languished in a middle region of twilight for the greater part of a thousand years.

But not to delay ourselves in this speculation, the final settlement of barbarous nations in Gaul, Spain, and Italy consummated the ruin of literature. Their first irruptions were uniformly attended with devastation; and if some of the Gothic kings, after their establishment, proved humane and civilized sovereigns, yet the nation gloried in its original rudeness

* Mosheim, Cent. 4. Tiraboschi endeavours to elevate higher the learning of the early Christians, t. ii., p. 328. Jortin, however, asserts that many of the bishops in the general councils of Ephesus and Chalcedon could not write their names.—Remarks on Ecclesiast. Hist., vol. ii., p. 417.

and viewed with no unreasonable disdain arts which had neither preserved their cultivators from corruption, nor raised them from servitude. Theodoric, the most famous of the Ostrogoth kings in Italy, could not write his name, and is said to have restrained his countrymen from attending those schools of learning, by which he, or rather perhaps his minister Cassiodorus, endeavoured to revive the studies of his Italian subjects. Scarcely one of the barbarians, so long as they continued unconfused with the native inhabitants, acquired the slightest tincture of letters; and the praise of equal ignorance was soon aspired to and attained by the entire mass of the Roman laity. They, however, could hardly have divested themselves so completely of all acquaintance with even the elements of learning, if the language in which books were written had not ceased to be their natural dialect. This remarkable change in the speech of France, Spain, and Italy, is most intimately connected with the extinction of learning; and there is enough of obscurity, as well as of interest, in the subject, to deserve some discussion.

Corruption of the Latin language.

It is obvious, on the most cursory view of the French and Spanish languages, that they, as well as the Italian, are derived from one common source, the Latin. That must therefore have been at some period, and certainly not since the establishment of the barbarous nations in Spain and Gaul, substituted in ordinary use for the original dialects of those countries, which are generally supposed to have been Celtic, not essentially differing from that which is spoken in Wales and Ireland. Rome, says Augustin, imposed not only her yoke, but her language, upon conquered nations. The success of such an attempt is indeed very remarkable. Though it is the natural effect of conquest, or even of commercial intercourse, to ingraft fresh words and foreign idioms on the stock of the original language, yet the entire disuse of the latter, and adoption of one radically different, scarcely takes place in the lapse of a far longer period than that of the Roman dominion in Gaul. Thus, in part of Britany, the people speak a language which has perhaps sustained no essential alteration from the revolution of two thousand years; and we know how steadily another Celtic dialect has kept its ground in Wales, notwithstanding English laws and government, and the long line of contiguous frontier, which brings the natives of that principality into contact with Englishmen. Nor did the Romans ever establish their language, I know not whether they wished to do so, in this island, as we perceive by that stubborn British tongue which has survived two conquests.*

In Gaul and in Spain, however, they did succeed, as the present state of the French and peninsular languages renders undeniable, though by gradual changes, and not, as the Benedictine authors of the Histoire Littéraire de la France seem to imagine, by a sudden and arbitrary innovation.† This is neither possible in itself, nor agreeable to the testimony of Irenæus, bishop of Lyons, at the end of the second century, who laments the necessity of learning Celtic.‡ But although the inhabitants of these provinces came at length to make use of Latin so completely as their mother-tongue, that few vestiges of their original Celtic could perhaps be discovered in their common speech, it does not follow that they spoke with the pure pronunciation of Italians, far less with that conformity to the written sounds, which we assume to be essential to the expression of Latin words.

Ancient Latin pronunciation.

It appears to be taken for granted that the Romans pronounced their language as we do at present, so far at least as the enunciation of all the consonants, however we may admit our deviations from the classical standard in propriety of sounds and in measure of time. Yet the example of our own language and of the French might show us that orthography may become a very inadequate representative

* Gibbon roundly asserts, "that the language of Virgil and Cicero, though with some inevitable mixture of corruption, was so universally adopted in Africa, Spain, Gaul, Great Britain, and Pannonia, that the faint traces of the Punic or Celtic idioms were preserved only in the mountains or among the peasants."—Decline and Fall, vol. i., p. 60 (8vo. edit.). For Britain he quotes Tacitus's Life of Agricola as his voucher. But the only passage in this work that gives the least colour to Gibbon's assertion, is one in which Agricola is said to have encouraged the children of British chieftains to acquire a taste for liberal studies, and to have succeeded so much by judicious commendation of their abilities, ut qui modo linguam Romanam abnuebant, eloquentiam concupiscerent (c. 21). This, it is sufficiently obvious, is very different from the national adoption of Latin as a mother-tongue.

† T. vii., preface.

‡ It appears by a passage quoted from the digest by M. Bonamy, Mém. de l'Acad. des Inscriptions, t. xxiv., p. 589, that Celtic was spoken in Gaul, or at least parts of it, as well as Punic in Africa.

of pronunciation. It is indeed capable of proof, that in the purest ages of Latinity, some variation existed between these two. Those numerous changes in spelling which distinguish the same words in the poetry of Ennius and of Virgil are best explained by the supposition of their being accommodated to the current pronunciation. Harsh combinations of letters, softened down through delicacy of ear or rapidity of utterance, gradually lost their place in the written language. Thus *exfregit* and *adrogavit* assumed a form representing their more liquid sound; and *auctor* was latterly spelled *autor*, which has been followed in French and Italian. *Autor* was probably so pronounced at all times; and the orthography was afterward corrected or corrupted, which ever we please to say, according to the sound. We have the best authority to assert, that the final *m* was very faintly pronounced, rather, it seems, as a rest and short interval between two syllables, than an articulate letter; nor indeed can we conceive upon what other ground it was subject to elision before a vowel in verse; since we cannot suppose that the nice ears of Rome would have submitted to a capricious rule of poetry, for which Greece presented no analogy.*

A decisive proof, in my opinion, of the deviation which took place, through the rapidity of ordinary elocution, from the strict laws of enunciation, may be found in the metre of Terence. His verses, which are absolutely refractory to the common laws of prosody, may be readily scanned by the application of this principle. Thus, in the first act of the Heautontimorumenos, a part selected at random, I have found, I. Vowels contracted or dropped, so as to shorten the word by a syllable; in *rei*, *viâ*, *diutius*, *ei*, *solius*, *eam*, *unius*, *suam*, *divitias*, *senex*, *voluntatem*, *illius*, *semel*; II. The proceleusmatic foot, or four short syllables, instead of the dactyl; scen. i., v. 59, 73, 76, 88, 109; scen. ii., v. 36; III. The elision of *s* in words ending with *us*, or *is* short, and sometimes even of the whole syllable, before the next word beginning with a vowel; in scen. i., v. 30, 81, 98, 101, 116, 119; scen. ii., v. 28. IV. The first syllable of *ille* is repeatedly shortened, and indeed nothing is more usual in Terence than this license; whence we may collect how ready this word was for abbreviation into the French and Italian articles. V. The last letter of *apud* is cut off, scen. i., v. 120, and scen. ii., v. 8. VI. *Hodie* is used as a pyrrhichius, in scen. ii., v. 11. VII. Lastly, there is a clear instance of a short syllable, the antepenultimate of *impulerim*, lengthened on account of the accent, at the 113th verse of the first scene.

These licenses are in all probability chiefly colloquial, and would not have been adopted in public harangues, to which the precepts of rhetorical writers commonly relate. But if the more elegant language of the Romans, since such we must suppose to have been copied by Terence for his higher characters, differed so much in ordinary discourse from their orthography, it is probable that the vulgar went into much greater deviations. The popular pronunciation errs generally, we might say perhaps invariably, by abbreviation of words, and by liquefying consonants, as is natural to the rapidity of colloquial speech.* It is by their knowledge of orthography and etymology that the more educated part of the community are preserved from these corrupt modes of pronunciation. There is always, therefore, a standard by which common speech may be rectified; and in proportion to the diffusion of knowledge and politeness, the deviations from it will be more slight and gradual. But in distant provinces, and especially where the language itself is but of recent introduction, many more changes may be expected to occur. Even in France and England, there are provincial dialects, which, if written with all their anomalies of pronunciation as well as idiom, would seem strangely out of unison with the regular language; and in Italy, as is well

Its corruption by the populace,

and the provincials.

* Atque eadem illa litera, quoties ultima est, et vocalem verbi sequentis ita contingit, ut in eam transire possit, etiam si scribitur, tamen parum exprimitur, ut *Multum ille*, et *Quantum erat*; adeo ut pene cujusdam novæ literæ sonum reddat. Neque enim eximitur, sed obscuratur, et tantùm aliqua inter duos vocales velut nota est, ne ipsæ coeant.—Quintilian, Institut., l. ix., c. 4, p. 585, edit. Capperonier.

* The following passage of Quintilian is an evidence both of the omission of harsh or superfluous letters by the best speakers, and of the corrupt abbreviation usual with the worst. Dilucida vero erit pronunciatio primum, si verba tota exegerit, quorum pars devorari, pars destitui solet, plerisque extremas syllabas non proferentibus, dum priorum sono indulgent. Ut est autem necessaria verborum explanatio, ita omnes computare et velut adnumerare literas, molestum et odiosum.—Nam et vocales frequentissimè coeunt, et consonantium quædam insequente vocali dissimulantur; utriusque exemplum posuimus; Multum ille et terris. Vitatur etiam duriorum inter se congressus, unde *pellexit* et *collegit*, et quæ alio loco dicta sunt, l. ii., c. 3, p. 696.

known, the varieties of dialect are still more striking. Now in an advancing state of society, and especially with such a vigorous political circulation as we experience in England, language will constantly approximate to uniformity, as provincial expressions are more and more rejected for incorrectness or inelegance. But where literature is on the decline, and public misfortunes contract the circle of those who are solicitous about refinement, as in the last ages of the Roman empire, there will be no longer any definite standard of living speech, nor any general desire to conform to it, if one could be found; and thus the vicious corruptions of the vulgar will entirely predominate. The niceties of ancient idiom will be totally lost; while new idioms will be formed out of violations of grammar sanctioned by usage, which, among a civilized people, would have been proscribed at their appearance.

Such appears to have been the progress of corruption in the Latin language. The adoption of words from the Teutonic dialects of the barbarians, which took place very freely, would not of itself have destroyed the character of that language, though it sullied its purity. The worst law Latin of the middle ages is still Latin, if its barbarous terms have been bent to the regular inflections. It is possible, on the other hand, to write whole pages of Italian, wherein every word shall be of unequivocal Latin derivation, though the character and personality, if I may so say, of the language be entirely dissimilar. But, as I conceive, the loss of literature took away the only check upon arbitrary pronunciation and upon erroneous grammar. Each people innovated through caprice, imitation of their neighbours, or some of those indescribable causes which dispose the organs of different nations to different sounds. The French melted down the middle consonants; the Italians omitted the final. Corruptions arising out of ignorance were mingled with those of pronunciation. It would have been marvellous if illiterate and semi-barbarous provincials had preserved that delicate precision in using the inflections of tenses, which our best scholars do not clearly attain. The common speech of any people whose language is highly complicated will be full of solecisms. The French inflections are not comparable in number or delicacy to the Latin, and yet the vulgar confuse their most ordinary forms.

But, in all probability, the variation of these derivative languages from popular Latin has been considerably less than it appears. In the purest ages of Latinity, the citizens of Rome itself made use of many terms which we deem barbarous, and of many idioms which we should reject as modern. That highly complicated grammar, which the best writers employed, was too elliptical and obscure, too deficient in the connecting parts of speech, for general use. We cannot indeed ascertain in what degree the vulgar Latin differed from that of Cicero or Seneca. It would be highly absurd to imagine, as some are said to have done, that modern Italian was spoken at Rome under Augustus.* But I believe it may be asserted, not only that much the greater part of those words in the present language of Italy, which strike us as incapable of a Latin etymology, are in fact derived from those current in the Augustan Age, but that very many phrases which offended nicer ears prevailed in the same vernacular speech, and have passed from thence into the modern French and Italian. Such, for example, was the frequent use of prepositions, to indicate a relation between two parts of a sentence which a classical writer would have made to depend on mere inflection.†

From the difficulty of retaining a right discrimination of tense seems to have proceeded the active auxiliary verb. It is possible that this was borrowed from the Teutonic languages of the barbarians, and accommodated both by them and by the natives to words of Latin origin. The passive auxiliary is obtained by a very ready resolution of any tense in that mood, and has not been altogether dispensed with even in Greek, while in Latin it is used much more frequently. It is not quite so easy to perceive the propriety of the active habeo or teneo, one or both of which all modern languages have adopted as their auxiliaries

* Tiraboschi (Storia dell. Lett. Ital., t. iii., preface, p. v.) imputes this paradox to Bembo and Quadrio; but I can hardly believe that either of them could maintain it in a literal sense.

† M. Bonamy, in an essay printed in Mém. de l'Académie des Inscriptions, t. xxiv., has produced several proofs of this from the classical writers on agriculture and other arts, though some of his instances are not in point, as any schoolboy would have told him. This essay, which, by some accident, had escaped my notice till I had nearly finished the observations in my text, contains, I think, the best view that I have seen of the process of transition by which Latin was changed into French and Italian. Add, however, the preface to Tiraboschi's third volume, and the thirty-second dissertation of Muratori.

in conjugating the verb. But in some instances this analysis is not improper; and it may be supposed that nations, careless of etymology or correctness, applied the same verb by a rude analogy to cases where it ought not strictly to have been employed.*

Next to the changes founded on pronunciation, and to the substitution of auxiliary verbs for inflections, the usage of the definite and indefinite articles in nouns appears the most considerable step in the transmutation of Latin into its derivative languages. None but Latin, I believe, has ever wanted this part of speech: and the defect to which custom reconciled the Romans, would be an insuperable stumbling-block to nations who were to translate their original idiom into that language. A coarse expedient of applying *unus ipse* or *ille* to the purposes of an article might perhaps be no unfrequent vulgarism of the provincials; and after the Teutonic tribes brought in their own grammar, it was natural that a corruption should become universal, which in fact supplied a real and essential deficiency.

Pronunciation no longer regulated by quantity.

That the quantity of Latin syllables is neglected, or rather lost in modern pronunciation, seems to be generally admitted. Whether indeed the ancient Romans, in their ordinary speaking, distinguished the measure of syllables with such uniform musical accuracy as we imagine, giving a certain time to those termed long, and exactly half that duration to the short, might perhaps be questioned; though this was probably done, or attempted to be done, by every reader of poetry. Certainly, however, the laws of quantity were forgotten, and an accentual pronunciation came to predominate, before Latin had ceased to be a living language. A Christian writer, named Commodianus, who lived before the end of the third century, according to some, or, as others think, in the reign of Constantine, has left us a philological curiosity, in a series of attacks on the pagan superstitions, composed in what are meant to be verses, regulated by accent instead of quantity, exactly as we read Virgil at present.†

It is not improbable that Commodianus may have written in Africa, the province in which, more than any, the purity of Latin was debased. At the end of the fourth century, St. Augustin assailed his old enemies, the Donatists, with nearly the same arms that Commodianus had wielded against heathenism. But as the refined and various music of hexameters was unlikely to be relished by the vulgar, he prudently adopted a different measure.* All the nations of Europe seem to love the trochaic verse; it was frequent on the Greek and Roman stage; it is more common than any other in the popular poetry of modern languages. This proceeds from its simplicity, its liveliness, and its ready accommodation to dancing and music. In St. Austin's poem, he united to a trochaic measure the novel attraction of rhyme.

As Africa must have lost all regard to the rules of measure in the fourth century, so it appears that Gaul was not more correct in the two next ages. A poem addressed by Auspicius, bishop of Toul, to Count Arbogastes, of earlier date probably than the invasion of Clovis,

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* See Lanzi, Saggio della Lingua Etrusca, t. i., c. 431; Mém. de l'Acad. des Inscrip., t. xxiv., p. 632.

† No description can give so adequate a notion of this extraordinary performance as a short specimen. Take the introductory lines; which really, prejudices of education apart, are by no means inharmonious:—

Præfatio nostra viam erranti demonstrat,
Respectumque bonum, cum venerit sæculi meta
Æternum fieri, quod discredunt inscia corda.
Ego similiter erravi tempore multo,
Fana prosequendo, parentibus insciis ipsis
Abstuli me tandem indo, legendo de lege.
Testificor Dominum, deleo, proh! civica turba
Inscia quod perdit, pergens deos quærere vanos
Ob ea perdoctus ignoros instruo verum.

Commodianus however did not keep up to this excellence in every part. Some of his lines are no reducible to any pronunciation, without the summary rules of Procrustes; as for instance—

Paratus ad epulas, et refugiscere præcepta; or
Capillos inficitis oculos fuligine relinitis.

It must be owned that his text is exceedingly corrupt, and I should not despair of seeing a truly critical editor improve his lines into unblemished hexameters. Till this time arrives, however, we must consider him either as utterly ignorant of metrical distinctions, or at least as aware that the populace whom he addressed did not observe them in speaking. Commodianus is published by Dawes at the end of his edition of Minucius Felix. Some specimens are quoted in Harris's Philological Inquiries.

* Archæologia, vol. xiv. p. 188. The following are the first lines:—

Abundantia peccatorum solet fratres conturbare;
Propter hoc Dominus noster voluit nos prænonere
Comparans regnum cœlorum reticulo misso in mare,
Congreganti multos pisces, omne genus hinc et inde,
Quos cum traxissent ad littus, tunc cœperunt sep arare,
Bonos in vasa miserunt, reliquos malos in mare

This trash seems below the level of Augustin but it could not have been much later than his age

is written with no regard to quantity.* The bishop by whom this was composed is mentioned by his contemporaries as a man of learning. Probably he did not choose to perplex the barbarian to whom he was writing (for Arbogastes is plainly a barbarous name) by legitimate Roman metre. In the next century, Gregory of Tours informs us that Chilperic attempted to write Latin verses; but the lines could not be reconciled to any division of feet; his ignorance having confounded long and short syllables together.† Now Chilperic must have learned to speak Latin like other kings of the Franks, and was a smatterer in several kinds of literature. If Chilperic therefore was not master of these distinctions, we may conclude that the bishops and other Romans with whom he conversed did not observe them; and that his blunders in versification arose from ignorance of rules, which, however fit to be preserved in poetry, were entirely obsolete in the living Latin of his age. Indeed, the frequency of false quantities in the poets even of the fifth, but much more of the sixth century, is palpable. Fortunatus is quite full of them. This seems a decisive proof that the ancient pronunciation was lost. Avitus tells us, even at the beginning of the same age, that few preserved the proper measure of syllables in singing. Yet he was Bishop of Vienne, where a purer pronunciation might be expected than in the remoter parts of Gaul.‡

Change of Latin into Romance.

Defective, however, as it had become in respect of pronunciation, Latin was still spoken in France during the sixth and seventh centuries. We have compositions of that time, intended for the people, in grammatical language. A song is still extant, in rhyme and loose accentual measure, written upon a victory of Clotaire II. over the Saxons in 622, and obviously intended for circulation among the people.§ Fortunatus says, in his life of St. Aubin of Angers, that he should take care not to use any expression unintelligible to the people.* Baudemind, in the middle of the seventh century, declares, in his life of St. Amand, that he writes in a rustic and vulgar style, that the reader may be excited to imitation.† Not that these legends were actually perused by the populace, for the very art of reading was confined to a few. But they were read publicly in the churches, and probably with a pronunciation accommodated to the corruptions of ordinary language. Still the Latin syntax must have been tolerably understood; and we may therefore say that Latin had not ceased to be a living language in Gaul during the seventh century. Faults indeed against the rules of grammar, as well as unusual idioms, perpetually occur in the best writers of the Merovingian period, such as Gregory of Tours; while charters drawn up by less expert scholars deviate much farther from purity.‡

The corrupt provincial idiom became gradually more and more dissimilar to grammatical Latin; and the lingua Romana rustica, as the vulgar *patois* (to borrow a word that I cannot well translate) had been called, acquired a distinct character as a new language in the eighth century.§ Latin orthography, which had been hitherto pretty well maintained in books, though not always in charters, gave way to a new spelling, conformably to the current pronunciation. Thus we find lui, for illius, in the Formularies of Marculfus; and Tu lo juva in a liturgy of Charlemagne's age, for Tu illum juva. When this barrier was once broken down, such a deluge of innovation poured in, that all the characteristics of Latin were effaced in writing as well as speaking, and the existence of a new language became undeniable. In a council held at Tours in 813, the bishops are ordered to have certain homilies of the

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* Recueil des Historiens, t. i., p. 815; it begins in the following manner:—

Præcelso expectabili bis Arbogasto comiti
Auspicius, qui diligo, salutem dico plurimam.
Magnas cœlesti Domino rependo corde gratias
Quod te Tullensi proxime magnum in urbe vidimus.
Multis me tuis artibus lætificabas antea,
Sed nunc fecisti maximo me exultare gaudio.

† Chilpericus rex . . . . confecit duos libros, quorum versiculi debiles nullis pedibus subsistere possunt: in quibus, dum non intelligebat, pro longis syllabas breves posuit, et pro brevibus longas statuebat, l. vi., c. 46.

‡ Mém de l Académie des Inscriptions, t. xvii. Hist. Littéraire de la France, t. ii., p. 28.

§ One stanza of this song will suffice to show that the Latin language was yet unchanged.—

De Clotario est canere rege Francorum,
Qui ivi pugnare cum gente Saxonum,
Quam graviter provenisset missis Saxonum,
Si non fuisset inclitus Faro de gente Burgundionum.

* Præcavendum est, ne ad aures populi minus aliquid intelligibile proferatur.—Mém. de l'Acad., t. xvii., p. 712.

† Rustico et plebeio sermone propter exemplum et imitationem, id. ibid.

‡ Hist. Littéraire de la France, t. iii., p 5 Mém de l'Académie, t. xxiv., p. 617 Nouveau Traité de Diplomatique, t. iv., p. 485.

§ Hist. Littéraire de la France, t. vii., p. 12 The editors say that it is mentioned by name even in the seventh century, which is very natural, as the corruption of Latin had then become striking

fathers translated into the rustic Roman, as well as the German tongue.* After this it is unnecessary to multiply proofs of the change which Latin had undergone.

In Italy, the progressive corruptions of the Latin language were analogous to those which occurred in France, though we do not find in writings any unequivocal specimens of a new formation at so early a period. But the old inscriptions, even of the fourth and fifth centuries, are full of solecisms and corrupt orthography. In legal instruments under the Lombard kings, the Latin inflections are indeed used, but with so little regard to propriety that it is obvious the writers had not the slightest tincture of grammatical knowledge. This observation extends to a very large proportion of such documents down to the twelfth century, and is as applicable to France and Spain as it is to Italy. In these charters the peculiar characteristics of Italian orthography and grammar frequently appear. Thus we find, in the eighth century, diveatis for debeatis, da for de in the ablative, avendi for habendi, dava for dabat, cedo a deo, and ad ecclesia, among many similar corruptions.† Latin was so changed, it is said by a writer of Charlemagne's age, that scarcely any part of it was popularly known. Italy indeed had suffered more than France itself by invasion, and was reduced to a lower state of barbarism, though probably from the greater distinctness of pronunciation habitual to the Italians, they lost less of their original language than the French. I do not find, however, in the writers who have treated this subject, any express evidence of a vulgar language distinct from Latin earlier than the close of the tenth century, when it is said in the epitaph of Pope Gregory V., who died in 999, that he instructed the people in three dialects; —the Frankish or German, the vulgar, and the Latin.‡

Its corruption in Italy.

When Latin had thus ceased to be a living language, the whole treasury of knowledge was locked up from the eyes of the people. The few who might have imbibed a taste for literature, if books had been accessible to them, were reduced to abandon pursuits that could only be cultivated through a kind of education not easily within their reach. Schools, confined to cathedrals and monasteries, and exclusively designed for the purposes of religion, afforded no encouragement or opportunities to the laity.§ The worst effect was, that, as the newly-formed languages were hardly made use of in writing, Latin being still preserved in all legal instruments and public correspondence, the very use of letters, as well as of books, was forgotten. For many centuries, to sum up the account of ignorance in a word, it was rare for a layman, of whatever rank, to know how to sign his name.† Their charters, till the use of seals became general, were subscribed with the mark of the cross. Still more extraordinary it was to find one who had any tincture of learning. Even admitting every indistinct commendation of a monkish biographer (with whom a knowledge of church-music would pass for literature),‡ we could make out a very short list of scholars. None certainly were more distinguished as such than Charlemagne and Alfred. But the former, unless we reject a very plain testimony, was incapable of writing;◊ and Alfred found difficulty in making a translation from the pastoral instruction of St. Gregory, on account of his imperfect knowledge of Latin.‖

Ignorance consequent on the disuse of Latin.

Whatever mention, therefore, we find of learning and the learned during these

* Mém. de l'Acad. des Insc., t. xvii. See two Memoirs in this volume by Du Clos and Le Bœuf, especially the latter, as well as that already mentioned in t. xxiv., p. 582, by M. Bonamy.

† Muratori, Dissert. i. and xliii.

‡ Usus Francisca, vulgari, et voce Latinâ
Instituit populos eloquio triplici.
Fontanini dell' Eloquenza Italiana, p. 15. Muratori, Dissert. xxxii.

* Histoire Littéraire de la France, t. vi., p. 20 Muratori, Dissert. xliii.

† Nouveau Traité de Diplomatique, t. ii., p 419. This became, the editors say, much less unusual about the end of the thirteenth century; a pretty late period! A few signatures to deeds appear in the fourteenth century; in the next they are more frequent.—Ibid. The emperor Frederick Barbarossa could not read (Struvius, Corpus Hist. German., t. i., p. 377), nor John, king of Bohemia, in the middle of the fourteenth century (Sismondi, t. v., p. 205), nor Philip the Hardy, king of France, although the son of St. Louis.—(Velly, t. vi., p 426.)

‡ Louis IV., king of France, laughing at Fulk, count of Anjou, who sang anthems among the choristers at Tours, received the following pithy epistle from his learned vassal: Noveritis, domine, quod rex illiteratus est asinus coronatus. Gesta Comitum Andegavensium. In the same book Geoffrey, father of our Henry II., is said to be optime literatus; which perhaps imports little more learning than his ancestor Fulk possessed.

◊ The passage in Eginhard which has occasioned so much dispute speaks for itself: Tentabat et scribere, tabulasque et codicillos ad hoc in lecticula sub cervicalibus circumferre solebat, ut, cum vacuum tempus esset, manum effigiandis literis assuefaceret; sed parum prosperè successit labor præposterus ac serò inchoatus.

‖ Spelman, Vit. Alfred., Append.

dark ages. must be understood to relate only to such as were within the pale of clergy, which indeed was pretty extensive, and comprehended many who did not exercise the offices of religious ministry. But even the clergy were, for a long period, not very materially superior, as a body, to the uninstructed laity. An inconceivable cloud of ignorance overspread the whole face of the church, hardly broken by a few glimmering lights, who owe almost the whole of their distinction to the surrounding darkness. In the sixth century, the best writers in Latin were scarcely read;* and perhaps from the middle of this age to the eleventh, there was, in a general view of literature, little difference to be discerned. If we look more accurately, there will appear certain gradual shades of twilight on each side of the greatest obscurity. France reached her lowest point at the beginning of the eighth century; but England was at that time more respectable, and did not fall into complete degradation till the middle of the ninth. There could be nothing more deplorable than the state of letters in Italy and in England during the succeeding century; but France seems to have been uniformly, though very slowly, progressive from the time of Charlemagne.†

Of this prevailing ignorance it is easy to produce abundant testimony. Contracts were made verbally, for want of notaries capable of drawing up charters; and these, when written, were frequently barbarous and ungrammatical to an incredible degree. For some considerable intervals scarcely any monument of literature has been preserved, except a few jejune chronicles, the vilest legends of saints, or verses equally destitute of spirit and metre. In almost every council, the ignorance of the clergy forms a subject for reproach. It is asserted, by one held in 992, that scarcely a single person was to be found in Rome itself who knew the first elements of letters.‡ Not one priest of a thousand in Spain, about the age of Charlemagne, could address a common letter of salutation to another.* In England, Alfred declares that he could no recollect a single priest south of the Thames (the most civilized part of England), at the time of his accession, who understood the ordinary prayers, or could translate Latin into his mother tongue.† Nor was this better in the time of Dunstan, when, it is said, none of the clergy knew how to write or translate a Latin letter.‡ The homilies which they preached were compiled for their use by some bishops, from former works of the same kind, or the writings of the fathers.

This universal ignorance was rendered unavoidable, among other causes, by the scarcity of books, which could only be procured at an immense price. From the conquest of Alexandria by the Saracens at the beginning of the seventh century, when the Egyptian papyrus almost ceased to be imported into Europe, to the close of the tenth, about which time the art of making paper from cotton rags seems to have been introduced, there were no materials for writing except parchment, a substance too expensive to be readily spared for mere purposes of literature.§ Hence

Scarcity of books.

* Hist. Littéraire de la France, t. iii., p. 5.

These four dark centuries, the eighth, ninth, tenth, and eleventh, occupy five large quarto volumes of the Literary History of France, by the fathers of St. Maur. But the most useful part will be found in the general view at the commencement of each volume; the remainder is taken up with biographies, into which the reader may dive at random, and sometimes bring up a curious fact.

Tiraboschi, Storia della Letteratura, t. iii., and Muratori's forty-third Dissertation, are good authorities for the condition of letters in Italy; but I cannot easily give references to al. the books which I have consulted.

‡ Tiraboschi, t. iii., p 198.

* Mabillon, De Re Diplomaticâ, p. 55.

† Spelman, Vit. Alfred., Append. The whole drift of Alfred's preface to this translation is to defend the expediency of rendering books into English, on account of the general ignorance of Latin. The zeal which this excellent prince shows for literature is delightful. Let us endeavour, he says, that all the English youth, especially the children of those who are freeborn, and can educate them may learn to read English before they take to any employment. Afterward, such as please may be instructed in Latin. Before the Danish invasion, indeed, he tells us, churches were well furnished with books; but the priests got little good from them, being written in a foreign language which they could not understand.

‡ Mabillon, De Re Diplomaticâ, p. 55. Ordericus Vitalis, a more candid judge of our unfortunate ancestors than other contemporary annalists, says, that the English were, at the conquest, rude and almost illiterate, which he ascribes to the Danish invasion.—Du Chesne, Hist. Norm. Script., p. 518. However, Ingulfus tells us, that the library of Croyland contained above three hundred volumes, till the unfortunate fire that destroyed that abbey in 1091.—Gale, xv. Scriptores, t. i., 93. Such a library was very extraordinary in the eleventh century, and could not have been equalled for some ages afterward. Ingulfus mentions at the same time a nadir, as he calls it, or planetarium, executed in various metals. This had been presented to Abbot Turketul in the tenth century by a king of France, and was, I make no doubt, of Arabian, or perhaps Greek manufacture.

§ Parchment was so scarce that none could be procured about 1120 for an illuminated copy of the Bible.—Warton's Hist. of English Poetry, Dissert II. I suppose the deficiency was of skins beautifu

an unfortunate practice gained ground, of erasing a manuscript in order to substitute another on the same skin. This occasioned the loss of many ancient authors, who have made way for the legends of saints or other ecclesiastical rubbish.

Want of eminent men in literature.

If we would listen to some literary historians, we should believe that the darkest ages contained many individuals, not only distinguished among their contemporaries, but positively eminent for abilities and knowledge. A proneness to extol every monk, of whose production a few letters or a devotional treatise survives, every bishop, of whom it is related that he composed homilies, runs through the laborious work of the Benedictins of St. Maur, the Literary History of France, and, in a less degree, is observable even in Tiraboschi, and in most books of this class. Bede, Alcuin, Hincmar, Raban, and a number of inferior names, become real giants of learning in their uncritical panegyrics. But one might justly say, that ignorance is the smallest defect of the writers of these dark ages. Several of them were tolerably acquainted with books; but that wherein they are uniformly deficient is original argument or expression. Almost every one is a compiler of scraps from the fathers, or from such semi-classical authors as Boethius, Cassiodorus, or Martianus Capella.* Indeed I am not aware that there appeared more than two really considerable men in the republic of letters, from the sixth to the middle of the eleventh century. John, surnamed Scotus or Erigena, a native of Ireland; and Gerbert, who became pope by the name of Silvester II.: the first endowed with a bold and acute metaphysical genius: the second excellent, for the time when he lived, in mathematical science and mechanical inventions.*

Causes of the preservation of learning religion

If it be demanded by what cause it happened that a few sparks of ancient learning survived throughout this long winter, we can only ascribe their preservation to the establishment of Christianity. Religion alone made a bridge, as it were, across the chaos, and has linked the two periods of ancient and modern civilization. Without this connecting principle Europe might indeed have awakened to intellectual pursuits, and the genius of recent times needed not to be invigorated by the imitation of antiquity. But the memory of Greece and Rome would have been feebly preserved by tradition, and the monuments of those nations might have excited, on the return of civilization, that vague sentiment of speculation and wonder with which men now contemplate Persepolis or the Pyramids. It is not, however, from religion simply that we have derived this advantage, but from religion as it was modified in the dark ages. Such is the complex reciprocation of good and evil in the dispensations of Providence, that we may assert, with only an apparent paradox, that, had religion been more pure, it would have been less permanent, and that Christianity has been preserved by means of its corruptions. The sole hope for literature depended on the Latin language; and I do not see why that should not have been lost, if three circumstances in the prevailing religious system, all of which we are justly accustomed to disapprove, had not conspired to maintain it; the papal supremacy, the monastic institutions, and the use of a Latin liturgy. A continual intercourse was kept up in consequence of the first, between Rome and the several nations of Europe; her laws were received by the bishops, her legates presided in councils; so that a

enough for this purpose; it cannot be meant that there was no parchment for legal instruments.

Manuscripts written on papyrus, as may be supposed from the fragility of the material, as well as the difficulty of procuring it, are of extreme rarity. That in the British Museum, being a charter to a church at Ravenna in 572, is in every respect the most curious; and indeed both Mabillon and Muratori seem never to have seen any thing written on papyrus; though they trace its occasional use down to the eleventh or twelfth centuries.—Mabillon, De Re Diplomaticâ, l. ii. Muratori, Antichità Italiane, Dissert. xliii., p. 602. But the authors of the Nouveau Traité de Diplomatique speak of several manuscripts on this material as extant in France and Italy.—T. i., p. 493.

As to the general scarcity and high price of books in the middle ages, Robertson (Introduction to Hist. Charles V., note x.) and Warton, in the above cited dissertation, not to quote authors less accessible, have collected some of the leading facts; to whom I refer the reader.

* Lest I should seem to have spoken too peremptorily, I wish it to be understood that I pretend to hardly any direct acquaintance with these writers, and found my censure on the authority of others, chiefly indeed on the admissions of those who are too disposed to fall into a strain of panegyric.—See Histoire Littéraire de la France, t. iv., p. 281 et alibi.

* John Scotus, who, it is almost needless to say must not be confounded with the still more famous metaphysician Duns Scotus, lived under Charles the Bald, in the middle of the ninth century. Silvester II. died in 1003. Whether he first brought the Arabic numeration into Europe, as has been commonly said, seems uncertain; it was at least not much practised for some centuries after his death.

common language was as necessary in the church as it is at present in the diplomatic relations of kingdoms. 2. Throughout the whole course of the middle ages, there was no learning, and very little regularity of manners, among the parochial clergy. Almost every distinguished man was either the member of a chapter or of a convent. The monasteries were subjected to strict rules of discipline, and held out, at the worst, more opportunities for study than the secular clergy possessed, and fewer for worldly dissipations. But their most important service was as secure repositories for books. All our manuscripts have been preserved in this manner, and could hardly have descended to us by any other channel; at least there were intervals when I do not conceive that any royal or private libraries existed. 3. Monasteries, however, would probably have contributed very little towards the preservation of learning, if the Scriptures and the liturgy had been translated out of Latin when that language ceased to be intelligible. Every rational principle of religious worship called for such a change; but it would have been made at the expense of posterity. One might presume, if such refined conjectures were consistent with historical caution, that the more learned and sagacious ecclesiastics of those times, deploring the gradual corruption of the Latin tongue, and the danger of its absolute extinction, were induced to maintain it as a sacred language, and the depositary, as it were, of that truth and that science which would be lost in the barbarous dialects of the vulgar. But a simpler explanation is found in the radical dislike of innovation which is natural to an established clergy. Nor did they want as good pretexts, on the ground of convenience, as are commonly alleged by the opponents of reform. They were habituated to the Latin words of the church-service, which had become, by this association, the readiest instruments of devotion, and with the majesty of which the Romance jargon could bear no comparison. Their musical chants were adapted to these sounds, and their hymns depended for metrical effect on the marked accents and powerful rhymes which the Latin language affords. The vulgate Latin of the Bible was still more venerable. It was like a copy of a lost original; and a copy attested by one of the most eminent fathers, and by the general consent of the church. These are certainly no adequate excuses for keeping the people in ignorance; and the gross corruption of the middle ages is in a great degree assignable to this policy. But learning, and consequently religion, have eventually derived from it the utmost advantage.

In the shadows of this universal ignorance, a thousand superstitions, like foul animals of night, were propagated and nourished. It would be very unsatisfactory to exhibit a few specimens of this odious brood, when the real character of those times is only to be judged by their accumulated multitude. In every age, it would be easy to select proofs of irrational superstition, which, separately considered, seem to degrade mankind from its level in the creation; and perhaps the contemporaries of Swedenborg and Southcote have no right to look very contemptuously upon the fanaticism of their ancestors. There are many books from which a sufficient number of instances may be collected to show the absurdity and ignorance of the middle ages in this respect. I shall only mention two, as affording more general evidence than any local or obscure superstition. In the tenth century, an opinion prevailed everywhere that the end of the world was approaching. Many charters begin with these words: "As the world is now drawing to its close." An army marching under the Emperor Otho I. was so terrified by an eclipse of the sun, which it conceived to announce this consummation, as to disperse hastily on all sides. As this notion seems to have been founded on some confused theory of the millennium, it naturally died away when the seasons proceeded in the eleventh century with their usual regularity.* A far more remarkable and permanent superstition was the appeal to heaven in judicial controversies, whether through the means of combat or of ordeal. The principle of these was the same; but in the former, it was mingled with feelings independent of religion; the natural dictates of resentment in a brave man unjustly accused, and the sympathy of a warlike people with the display of skill and intrepidity. These, in course of time, almost obliterated the primary character of judicial combat, and ultimately changed it into the modern duel, in which assuredly there is no mixture of superstition.† But, in the various

Superstitions.

* Robertson, Introduction to Hist. Charles V. note 13. Schmidt, Hist. des Allemands, t. ii., p 380. Hist. Littéraire de la France, t. vi.

† Duelling, in the modern sense of the word, exclusive of casual frays and single combat during war, was unknown before the sixteenth century

tests of innocence which were called ordeals, this stood undisguised and unqualified. It is not necessary to describe what is so well known; the ceremonies of trial by handling hot iron, by plunging the arm into boiling fluids, by floating or sinking in cold water, or by swallowing a piece of consecrated bread. It is observable that, as the interference of Heaven was relied upon as a matter of course, it seems to have been reckoned nearly indifferent, whether such a test was adopted as must, humanly considered, absolve all the guilty, or one that must convict all the innocent. The ordeals of hot iron or water were, however, more commonly used; and it has been a perplexing question, by what dexterity these tremendous proofs were eluded. They seem at least to have placed the decision of all judicial controversies in the hands of the clergy, who must have known the secret, whatever that might be, of satisfying the spectators that an accused person had held a mass of burning iron with impunity. For several centuries this mode of investigation was in great repute, though not without opposition from some eminent bishops. It does discredit to the memory of Charlemagne that he was one of its warmest advocates.* But the judicial combat, which indeed might be reckoned one species of ordeal, gradually put an end to the rest; and as the church acquired better notions of law, and a code of her own, she strenuously exerted herself against all these barbarous superstitions.†

But the religious ignorance of the middle ages sometimes burst out in ebullitions of epidemical enthusiasm, more remarkable than these superstitious usages, though proceeding in fact from similar causes. For enthusiasm is little else than superstition put in motion, and is equally founded on a strong conviction of supernatural agency without any just conception of its nature. Nor has any denomination of Christians produced, or even sanctioned, more fanaticism than the church of Rome.* These epidemical phrensies, however, to which I am alluding, were merely tumultuous, though certainly fostered by the creed of perpetual miracles, which the clergy inculcated, and drawing a legitimate precedent for religious insurrection from the crusades. For these, among their other evil consequences, seem to have principally excited a wild fanaticism that did not sleep for several centuries.† Enthusiastic risings

The first conspicuous appearance of it was in the reign of Philip Augustus, when the mercenary troops, dismissed from the pay of that prince and of Henry II., committed the greatest outrages in the south of France. One Durand, a carpenter, deluded, it is said, by a contrived appearance of the Virgin, put himself at the head of an army of the populace, in order to destroy these marauders. His

But we find one anecdote, which seems to illustrate its derivation from the judicial combat. The dukes of Lancaster and Brunswick, having some differences, agreed to decide them by duel before John, king of France. The lists were prepared with the solemnity of a real trial by battle; but the king interfered to prevent the engagement.—Villaret, t. ix., p. 71. The barbarous practice of wearing swords as a part of domestic dress, which tended very much to the frequency of duelling, was not introduced till the latter part of the fifteenth century. I can only find one print in Montfaucon's Monuments of the French monarchy where a sword is worn without armour before the reign of Charles VIII.: though a few, as early as the reign of Charles VI., have short daggers in their girdles. The exception is a figure of Charles VII., t. iii., pl. 47

* Baluzii Capitularia, p. 444. It was abolished by Louis the Debonair, a man, as I have noticed in another place, not inferior, as a legislator, to his father, ibid., p. 668.

† Ordeals were not actually abolished in France, notwithstanding the law of Louis above mentioned, so late as the eleventh century.—Bouquet, t. xi., p. 430; nor in England till the reign of Henry III. Some of the stories we read, wherein accused persons have passed triumphantly through these severe proofs, are perplexing enough: and perhaps it is safer, as well as easier, to deny than to explain them. For example, a writer in the Archæologia, vol. xv., p. 172, has shown that Emma, queen of Edward the Confessor, did not perform her trial by stepping *between*, as Blackstone imagines, but *upon* nine redhot ploughshares. But he seems not aware that the whole story is unsupported by any contemporary or even respectable testimony. A similar anecdote is related of Cunegunda, wife of the Emperor Henry II., which probably gave rise to that of Emma. There are, however, medicaments, as is well known, that protect the skin to a certain degree against the effect of fire. This phenomenon would pass for miraculous, and form the basis of those exaggerated stories in monkish books.

* Besides the original lives of popish saints, and especially that of St. Francis in Wadding's Annales Minorum, the reader will find amusement in Bishop Lavington's Enthusiasm of Methodists and Papists compared.

† The most singular effect of this crusading spirit was witnessed in 1211, when a multitude, amounting, as some say, to 90,000, chiefly composed of children, and commanded by a child, set out for the purpose of recovering the Holy Land. They came for the most part from Germany, and reached Genoa without harm. But finding there an obstacle which their imperfect knowledge of geography had not anticipated, they soon dispersed in various directions. Thirty thousand arrived at Marseilles, where part were murdered, part probably starved, and the rest sold to the Saracens.—Annali di Muratori, A. D. 1211. Velly, Hist. de France, t. iv., p. 206

followers were styled Brethren of the White Caps, from the linen coverings of their heads. They bound themselves not to play at dice, nor frequent taverns; to wear no affected clothing, to avoid perjury and vain swearing. After some successes over the plunderers, they went so far as to forbid the lords to take any dues from their vassals, on pain of incurring the indignation of the brotherhood. It may easily be imagined that they were soon entirely discomfited, so that no one dared to own that he had belonged to them.*

During the captivity of St. Louis in Egypt, a more extensive and terrible ferment broke out in Flanders, and spread from thence over great part of France. An impostor declared himself commissioned by the Virgin to preach a crusade, not to the rich and noble, who, for their pride, had been rejected of God, but the poor. His disciples were called Pastoureaux, the simplicity of shepherds having exposed them more readily to this delusion. In a short time they were swelled by the confluence of abundant streams to a moving mass of a hundred thousand men, divided into companies, with banners bearing a cross and a lamb, and commanded by the impostor's lieutenants. He assumed a priestly character, preaching, absolving, annulling marriages. At Amiens, Bourges, Orleans, and Paris itself, he was received as a divine prophet. Even the regent Blanche, for a time, was led away by the popular tide. His main topic was reproach of the clergy for their idleness and corruption; a theme well adapted to the ears of the people, who had long been uttering similar strains of complaint. In some towns his followers massacred the priests and plundered the monasteries. The government at length began to exert itself; and the public sentiment turning against the authors of so much confusion, this rabble was put to the sword or dissipated.† Seventy years afterward, an insurrection almost exactly parallel to this burst out under the same pretence of a crusade. These insurgents too bore the name of Pastoureaux, and their short career was distinguished by a general massacre of the Jews.‡

But though the contagion of fanaticism spreads much more rapidly among the populace, and in modern times is almost entirely confined to it, there were examples in the middle ages of an epidemical religious lunacy, from which no class was exempt. One of these occurred about the year 1260, when a multitude of every rank, age, and sex, marching two by two in procession along the streets and public roads, mingled groans and dolorous hymns with the sound of leathern scourges which they exercised upon their naked backs. From this mark of penitence, which, as it bears at least all the appearance of sincerity, is not uncommon in the church of Rome, they acquired the name of Flagellants. Their career began, it is said, at Perugia, whence they spread over the rest of Italy, and into Germany and Poland. As this spontaneous fanaticism met with no encouragement from the church, and was prudently discountenanced by the civil magistrate, it died away in a very short time.* But it is more surprising, that, after almost a century and a half of continual improvement and illumination, another irruption of popular extravagance burst out under circumstances exceedingly similar.† In the month of August, 1399, says a contemporary historian, there appeared all over Italy a description of persons called Bianchi, from the white linen vestments that they wore They passed from province to province, and from city to city, crying out Misericordia! with their faces covered and bent towards the ground, and bearing before them a great crucifix. Their constant song was, Stabat Mater dolorosa This lasted three months; and whoever did not attend their procession was reputed a heretic.‡ Almost every Italian writer of the time takes notice of these Bianchi; and Muratori ascribes a remarkable reformation of manners (though certainly a very transient one) to their influence.§ Nor were they confined to Italy, though no such meritorious exertions are reputed to them in other countries. In France, their practice of cov-

* Velly, t. iii., p. 295. Du Cange, v. Capuciati.

† Id., Hist. de France, t. v., p. 7. Du Cange, v. Pastorielli.

‡ Id., t. viii., p. 99. The continuator of Nangis says, sicut fumus subitò evanuit tota illa commotio. Spicilegium, t iii., p. 77

* Velly, t. v., p. 279. Du Cange, Verberatio

† Something of a similar kind is mentioned by G. Villani, under the year 1310, l. viii., c. 122.

‡ Annal. Mediolan. in Murat. Script. Rer. Ital., t. xvi., p. 832. G. Stella, Ann. Genuens., t. xvii., p 1072. Chron. Foroliviense, t. xix., p. 874. Ann. Bonincontri, t. xxi., p. 79.

§ Dissert. 75. Sudden transitions from profligate to austere manners were so common among individuals, that we cannot be surprised at their sometimes becoming in a manner national. Azarius, a chronicler of Milan, after describing the almost incredible dissoluteness of Pavia, gives an account of an instantaneous reformation wrought by the preaching of a certain friar This was about 1360.—Script Rer. Ital., t. xvi., p. 375

ering the face gave such opportunity to crime as to be prohibited by the government;* and we have an act on the rolls of the first parliament of Henry IV., forbidding any one, "under pain of forfeiting all his worth, to receive the new sect in white clothes, pretending to great sanctity," which had recently appeared in foreign parts.†

The devotion of the multitude was wrought to this feverish height by the prevailing system of the clergy. In that singular polytheism which had been grafted on the language rather than the principles of Christianity, nothing was so conspicuous as the belief of perpetual miracles; if indeed those could properly be termed miracles, which, by their constant recurrence, even upon trifling occasions, might seem within the ordinary dispensations of Providence. These superstitions arose in what are called primitive times, and are certainly no part of popery, if in that word we include any especial reference to the Roman see. But successive ages of ignorance swelled the delusion to such an enormous pitch, that it was as difficult to trace, we may say without exaggeration, the real religion of the Gospel in the popular belief of the laity, as the real history of Charlemagne in the romance of Turpin. It must not be supposed that these absurdities were produced, as well as nourished, by ignorance. In most cases they were the work of deliberate imposture. Every cathedral or monastery had its tutelar saint, and every saint his legend, fabricated in order to enrich the churches under his protection, by exaggerating his virtues, his miracles, and consequently his power of serving those who paid liberally for his patronage.‡ Many of those saints were imaginary persons; sometimes a blundered inscription added a name to the calendar; and sometimes, it is said, a heathen god was surprised at the company to which he was introduced, and the rites with which he was honoured.§

Pretended miracles.

It would not be consonant to the nature of the present work, to dwell upon the erroneousness of this religion; but its effects upon the moral and intellectual character of mankind was so prominent, that no one can take a philosophical view of the middle ages without attending more than is at present fashionable to their ecclesiastical history. That the exclusive worship of saints, under the guidance of an artful though illiterate priesthood, degraded the understanding, and begot a stupid credulity and fanaticism, is sufficiently evident. But it was also so managed as to loosen the bonds of religion, and pervert the standard of morality. If these inhabitants of heaven had been represented as stern avengers, accepting no slight atonement for heavy offences, and prompt to interpose their control over natural events for the detection and punishment of guilt, the creed, however impossible to be reconciled with experience, might have proved a salutary check upon a rude people, and would at least have had the only palliation that can be offered for a religious imposture, its political expediency. In the legends of those times, on the contrary, they appeared only as perpetual intercessors, so good-natured and so powerful, that a sinner was more emphatically foolish than he is usually represented, if he failed to secure himself against any bad consequences. For a little attention to the saints, and especially to the Virgin, with due liberality to their servants, had saved, we would be told, so many of the most atrocious delinquents, that he might equitably presume upon similar luck in his own case.

Mischiefs arising from this superstition.

This monstrous superstition grew to its height in the twelfth century. For the advance that learning then made was by no means sufficient to counteract the vast increase of monasteries, and the opportunities which the greater cultivation of modern languages afforded for the diffusion of legendary tales. It was now too that the veneration paid to the Virgin, in early times very great, rose to an almost exclusive idolatry. It is difficult to conceive the stupid absurdity, and the disgusting profaneness of those stories, which were invented by the monks to do her honour. A few examples have been thrown into a note.*

* Villaret, t. xii., p. 327

† Rot. Parl., v. iii., p. 428.

‡ This is confessed by the authors of Histoire Littéraire de la France, t. ii., p. 4, and indeed by many Catholic writers. I need not quote Mosheim, who more than confirms every word of my text.

§ Middleton's Letter from Rome. If some of our eloquent countrymen's positions should be disputed, there are still abundant Catholic testimonies, that imaginary saints have been canonized.

* Le Grand d'Aussy has given us, in the fifth volume of his Fabliaux, several of the religious tales by which the monks endeavoured to withdraw the people from romances of chivalry The following specimens will abundantly confirm my assertions, which may perhaps appear harsh and extravagant to the reader.

There was a man whose occupation was highway robbery; but, whenever he set out on any such expedition, he was careful to address a prayer to

Not altogether unmixed with good.

Whether the superstition of these dark ages had actually passed that point, when it becomes more injurious to public morals and the welfare of society than the entire absence of all religious notions, is a very complex question, upon which I would by no means pronounce an affirmative decision. A salutary influence breathed from the spirit of a more genuine religion, often displayed itself among the corruptions of a degenerate superstition. In the original principles of monastic orders, and the rules by which they ought at least to have been governed, there was a character of meekness, self-denial, and charity, that could not wholly be effaced. These virtues, rather than justice and veracity, were inculcated by the religious ethics of the middle ages: and in the relief of indigence, it may, upon the whole, be asserted, that the monks did not fall short of their profession.* This eleemosynary spirit, indeed, remarkably distinguishes both Christianity and Mahometanism from the moral systems of Greece and Rome, which were very deficient in general humanity and sympathy with suffering. Nor do we find in any single instance during ancient times, if I mistake not, those public institutions for the alleviation of human miseries, which have long been scattered over every part of Europe. The virtues of the monks assumed a still higher character when they stood forward as protectors of the oppressed. By an established law, founded on very ancient superstition, the precincts of a church afforded sanctuary to accused persons. Under a due administration of justice, this privilege would have been simply and constantly mischievous, as we properly consider it to be in those countries where it still subsists. But in the rapine and tumult of the middle ages, the right of sanctuary might as often be a shield to innocence as an immunity to crime. We can hardly regret, in reflecting on the desolating violence which prevailed, that

the Virgin. Taken at last, he was sentenced to be hanged. While the cord was round his neck, he made his usual prayer, nor was it ineffectual. The Virgin supported his feet "with her white hands," and thus kept him alive two days, to the no small surprise of the executioner, who attempted to complete his work with strokes of a sword. But the same invisible hand turned aside the weapon, and the executioner was compelled to release his victim, acknowledging the miracle. The thief retired into a monastery, which is always the termination of these deliverances.

At the monastery of St. Peter, near Cologne, lived a monk perfectly dissolute and irreligious, but very devout towards the Apostle. Unluckily, he died suddenly without confession. The fiends came as usual to seize his soul. St. Peter, vexed at losing so faithful a votary, besought God to admit the monk into Paradise. His prayer was refused, and though the whole body of saints, apostles, angels, and martyrs joined at his request to make interest, it was of no avail. In this extremity he had recourse to the Mother of God. "Fair lady," he said, "my monk is lost if you do not interfere for him; but what is impossible for us will be but sport to you, if you please to assist us. Your son, if you but speak a word, must yield, since it is in your power to command him." The Queen Mother assented, and, followed by all the virgins, moved towards her Son. He who had himself given the precept, Honour thy father and thy mother, no sooner saw his own parent approach, than he rose to receive her; and, taking her by the hand, inquired her wishes. The rest may be easily conjectured. Compare the gross stupidity, or rather the atrocious impiety of this tale, with the pure theism of the Arabian Nights, and judge whether the Deity was better worshipped at Cologne or at Bagdad.

It is unnecessary to multiply instances of this kind. In one tale the Virgin takes the shape of a nun, who had eloped from the convent, and performs her duties ten years, till, tired of a libertine life, she returns unsuspected. This was in consideration of her having never omitted to say an Ave as she passed the Virgin's image. In another, a gentleman, in love with a handsome widow, consents, at the instigation of a sorcerer, to renounce God and the saints, but cannot be persuaded to give up the Virgin, well knowing that, if he kept her his friend, he should obtain pardon through her means. Accordingly, she inspired his mistress with so much passion, that he married her within a few days.

These tales, it may be said, were the production of ignorant men, and circulated among the populace. Certainly they would have excited contempt and indignation in the more enlightened clergy. But I am concerned with the general character of religious notions among the people: and for this it is better to take such popular compositions, adapted to what the laity already believed, than the writings of comparatively learned and reflecting men. However, stories of the same cast are frequent in the monkish historians. Matthew Paris, one of the most respectable of that class, and no friend to the covetousness or relaxed lives of the priesthood, tells us of a knight who was on the point of being damned for frequenting tournaments,

but saved by a donation he had formerly made to the Virgin, p. 290.

* I am inclined to acquiesce in this general opinion; yet an account of expenses at Bolton Abbey, about the reign of Edward II., published in Whitaker's History of Craven, p. 51, makes a very scanty show of almsgiving in this opulent monastery. Much, however, was no doubt given in victuals. But it is a strange error to conceive that English monasteries before the dissolution fed the indigent part of the nation, and gave that general relief which the poor-laws are intended to afford.

Piers Plowman is indeed a satirist; but he plainly charges the monks with want of charity.

Little had lordes to do to give landes from their heires,
To religious that have no ruthe though it rain on their aultres;
In many places there the parsons be themself at ease,
Of the poor they have no pitie, and that is the poor charitie

there should have been some green spots in the wilderness, where the feeble and the persecuted could find refuge. How must this right have enhanced the veneration for religious institutions! How gladly must the victims of internal warfare have turned their eyes from the baronial castle, the dread and scourge of the neighbourhood, to those venerable walls, within which not even the clamour of arms could be heard, to disturb the chant of holy men, and the sacred service of the altar! The protection of the sanctuary was never withheld. A son of Chilperic, king of France, having fled to that of Tours, his father threatened to ravage all the lands of the church unless they gave him up. Gregory, the historian, bishop of the city, replied in the name of his clergy, that Christians could not be guilty of an act unheard of among pagans. The king was as good as his word, and did not spare the estate of the church, but dared not infringe its privileges. He had indeed previously addressed a letter to St. Martin, which was laid on his tomb in the church, requesting permission to take away his son by force; but the honest saint returned no answer.*

Vices of the monks and clergy.

The virtues, indeed, or supposed virtues, which had induced a credulous generation to enrich so many of the monastic orders, were not long preserved. We must reject, in the excess of our candour, all testimonies that the middle ages present, from the solemn declaration of councils, and reports of judicial inquiry, to the casual evidence of common fame in the ballad or romance, if we would extenuate the general corruption of those institutions. In vain new rules of discipline were devised, or the old corrected by reforms. Many of their worst vices grew so naturally out of their mode of life, that a stricter discipline could have no tendency to extirpate them. Such were the frauds I have already noticed, and the whole scheme of hypocritical austerities. Their extreme licentiousness was sometimes hardly concealed by the cowl of sanctity. I know not by what right we should disbelieve the reports of the visitation under Henry VIII., entering as they do into a multitude of specific charges, both probable in their nature and consonant to the unanimous opinion of the world.† Doubtless there were many communities, as well as individuals, to whom none of these reproaches would apply. In the very best view, however, that can be taken of monasteries, their existence is deeply injurious to the general morals of a nation. They withdraw men of pure conduct and conscientious principles from the exercise of social duties, and leave the common mass of human vice more unmixed. Such men are always inclined to form schemes of ascetic perfection, which can only be fulfilled in retirement; but, in the strict rules of monastic life, and under the influence of a grovelling superstition, their virtue lost all its usefulness. They fell implicitly into the snares of crafty priests, who made submission to the church not only the condition, but the measure of all praise. He is a good Christian, says Eligius, a saint of the seventh century, who comes frequently to church; who presents an oblation that it may be offered to God on the altar; who does not taste the fruits of his land till he has consecrated a part of them to God; who can repeat the Creed or the Lord's Prayer. Redeem your souls from punishment while it is in your power; offer presents and tithes to churches, light candles in holy places as much as you can afford, come more frequently to church, implore the protection of the saints; for, if you observe these things, you may come with security at the day of judgment to say, Give unto us, Lord, for we have given unto thee.*

* Schmidt, Hist. des Allemands, t. i., p. 374.

† See Fosbrooke's British Monachism, vol. i., p. 127, and vol. ii., p. 8, for a farrago of evidence against the monks. Clemangis French theologian of considerable eminence at the beginning of the fifteenth century, speaks of nunneries in the following terms: Quid aliud sunt hoc tempore puellarum monasteria, nisi quædam non dico Dei sanctuaria, sed Veneris execranda prostibula, sed lascivorum et impudicorum juvenum ad libidines explendas receptacula? ut idem sit hodie puellam elare, quod et publicè ad scortandum exponere.—William Prynne, from whose records, vol. ii., p. 229, I have taken this passage, quotes it on occasion of a charter of King John, banishing thirty nuns of Ambresbury into different convents, propter vitæ suæ turpitudinem.

* Mosheim, cent. vii., c. 3. Robertson has quoted this passage, to whom perhaps I am immediately indebted for it.—Hist. Charles V., vol. i., note 11.

I leave this passage as it stood in former editions. But it is due to justice that this extract from Eligius should never be quoted in future, as the translator of Mosheim has induced Robertson and many others, as well as myself, to do. Dr. Lingard has pointed out that it is a very imperfect representation of what Eligius has written; for though he has dwelled on these devotional practices as parts of the definition of a good Christian he certainly adds a great deal more to which no one could object. Yet no one is in fact to blame for this misrepresentation, which, being contained in popular books, has gone forth so widely. Mosheim, as will appear on referring to him, did not

With such a definition of the Christian character, it is not surprising that any fraud and injustice became honourable when it contributed to the riches of the clergy and glory of their order. Their frauds, however, were less atrocious than the savage bigotry with which they maintained their own system and infected the laity. In Saxony, Poland, Lithuania, and the countries on the Baltic Sea, a sanguinary persecution extirpated the original idolatry. The Jews were everywhere the objects of popular insult and oppression, frequently of a general massacre, though protected, it must be confessed, by the laws of the church, as well as, in general, by temporal princes.* Of the crusades it is only necessary to repeat, that they began in a tremendous eruption of fanaticism, and ceased only because that spirit could not be constantly kept alive. A similar influence produced the devastation of Languedoc, the stakes and scaffolds of the Inquisition, and rooted in the religious theory of Europe those maxims of intolerance which it has so slowly, and still, perhaps, so imperfectly, renounced.

From no other cause are the dictates of sound reason and the moral sense of mankind more confused than by this narrow theological bigotry. For as it must often happen that men, to whom the arrogance of a prevailing faction imputes religious error, are exemplary for their performance of moral duties, these virtues gradually cease to make their proper impression, and are depreciated by the rigidly orthodox, as of little value in comparison with just opinions in speculative points. On the other hand vices are forgiven to those who are zealous in the faith. I speak too gently, and with a view to later times; in treating of the dark ages, it would be more correct to say that crimes were commended. Thus Gregory of Tours, a saint of the church, after relating a most atrocious story of Clovis, the murder of a prince whom he had previously instigated to parricide, continues the sentence: "For God daily subdued his enemies to his hand, and increased his kingdom; because he walked before him in uprightness, and did what was pleasing in his eyes."*

Commutation of penances.

It is a frequent complaint of ecclesiastical writers, that the rigorous penances, imposed by the primitive canons upon delinquents, were commuted in a laxer state of discipline for less severe atonements, and ultimately indeed for money.† We must not, however, regret that the clergy should have lost the power of compelling men to abstain fifteen years from eating meat, or to stand exposed to public derision at the gates of a church. Such implicit submissiveness could only have produced superstition and hypocrisy among the laity, and prepared the road for a tyranny not less oppressive than that of India or ancient Egypt. Indeed, the two earliest instances of ecclesiastical interference with the rights of sovereigns, namely, the deposition of Wamba in Spain, and that of Louis the Debonair, were founded upon this austere system of penitence. But it is true that a repentance redeemed by money, or per-

quote the passage as containing a complete definition of the Christian character. His translator, Maclaine, mistook this, and wrote, in consequence, the severe note which Robertson has copied. I have seen the whole passage in D'Achery's Spicilegium (vol. v., p. 213, 4to. edit.), and can testify that Dr. Lingard is perfectly correct. Upon the whole, this is a striking proof how dangerous it is to take any authorities at second hand.—*Note to Fourth Edition.*

* Mr. Turner has collected many curious facts relative to the condition of the Jews, especially in England.—Hist. of England, vol. ii., p. 95. Others may be found dispersed in Velly's History of France; and many in the Spanish writers, Mariana and Zurita. The following are from Vaissette's History of Languedoc. It was the custom at Toulouse to give a blow on the face to a Jew every Easter; this was commuted in the twelfth century for a tribute, t. ii., p. 151. At Beziers another usage prevailed, that of attacking the Jews' houses with stones from Palm Sunday to Easter. No other weapon was to be used; but it generally produced bloodshed. The populace were regularly instigated to the assault by a sermon from the bishop. At length a prelate wiser than the rest abolished this ancient practice, but not without receiving a good sum from the Jews, p. 485.

* Greg. Tur., l. ii., c. 40. Of Theodebert, grandson of Clovis, the same historian says, magnum se et in omni bonitate præcipuum reddidit. In the next paragraph we find a story of his having two wives, and looking so tenderly on the daughter of one of them, that her mother tossed her over a bridge into the river, l. iii., c 25. This indeed is a trifle to the passage in the text. There are continual proofs of immorality in the monkish historians. In the history of Ramsey Abbey, one of our best documents for Anglo-Saxon times, we have an anecdote of a bishop who made a Danish nobleman drunk that he might cheat him of an estate, which is told with much approbation.—Gale, Script. Anglic., t. i., p. 441. Walter de Hemingford recounts with excessive delig the well-known story of the Jews who were persuaded by the captain of their vessel to walk on the sands at low water, till the rising tide drowned them, and adds that the captain was both pardoned and rewarded for it by the king, gratiam promeruit et præmium. This is a mistake, inasmuch as he was hanged; but it exhibits the character of the historian.—Hemingford p. 21.

† Fleury, Troisième discours sur l'Histoire Ecclésiastique.

formed by a substitute, could have no salutary effect on the sinner; and some of the modes of atonement which the church most approved were particularly hostile to public morals. None was so usual as pilgrimage, whether to Jerusalem or Rome, which were the great objects of devotion; or to the shrine of some national saint, a James of Compostella, a David, or a Thomas Becket. This licensed vagrancy was naturally productive of dissoluteness, especially among the women. Our English ladies, in their zeal to obtain the spiritual treasures of Rome, are said to have relaxed the necessary caution about one that was in their own custody.* There is a capitulary of Charlemagne directed against itinerant penitents, who probably considered the iron chain around their necks an expiation of future as well as past offences.†

The crusades may be considered as martial pilgrimages on an enormous scale, and their influence upon general morality seems to have been altogether pernicious. Those who served under the cross would not indeed have lived very virtuously at home; but the confidence in their own merits, which the principle of such expeditions inspired, must have aggravated the ferocity and dissoluteness of their ancient habits. Several historians attest the depravation of morals which existed both among the crusaders and in the states formed out of their conquests.‡

While religion had thus lost almost every quality that renders it conducive to the good order of society, the control of human law was still less efficacious. But this part of my subject has been anticipated in other passages of the present work; and I shall only glance at the want of regular subordination, which rendered legislative and judicial edicts a dead letter, and at the incessant private warfare, rendered legitimate by the usages of most continental nations. Such hostilities, conducted, as they must usually have been, with injustice and cruelty, could not fail to produce a degree of rapacious ferocity in the general disposition of a people.

Want of law.

And this certainly was among the characteristics of every nation for many centuries.

It is easy to infer the degradation of society during the dark ages from the state of religion and police. Certainly there are a few great landmarks of moral distinctions so deeply fixed in human nature, that no degree of rudeness can destroy, nor even any superstition remove them. Wherever an extreme corruption has, in any particular society, defaced these sacred archetypes that are given to guide and correct the sentiments of mankind, it is in the course of Providence that the society itself should perish by internal discord or the sword of a conqueror. In the worst ages of Europe there must have existed the seeds of social virtues, of fidelity, gratitude, and disinterestedness; sufficient at least to preserve the public approbation of more elevated principles than the public conduct displayed. Without these imperishable elements, there could have been no restoration of the moral energies; nothing upon which reformed faith, revived knowledge, renewed law, could exercise their nourishing influences. But history, which reflects only the more prominent features of society, cannot exhibit the virtues that were scarcely able to struggle through the general depravation. I am aware that a tone of exaggerated declamation is at all times usual with those who lament the vices of their own time; and writers of the middle ages are in abundant need of allowance on this score. Nor is it reasonable to found any inferences as to the general condition of society on single instances of crimes, however atrocious, especially when committed under the influence of violent passion. Such enormities are the fruit of every age, and none is to be measured by them. They make, however, a strong impression at the moment, and thus find a place in contemporary annals, from which modern writers are commonly glad to extract whatever may seem to throw light upon manners. I shall therefore abstain from producing any particular cases of dissoluteness or cruelty from the records of the middle ages, lest I should weaken a general proposition by offering an imperfect induction to support it, and shall content myself with observing, that times to which men sometimes appeal, as to a golden period, were far inferior in every moral comparison to those in which we are thrown.* One

Degradation of morals.

* Henry. Hist. of England, vol. ii., c. 7.

† Du Cange, v. Peregrinatio. Non sinantur vagari isti nudi cum ferro, qui dicunt se datâ pœnitentiâ ire vagantes. Melius videtur, ut si aliquod inconsuetum et capitale crimen commiserint, in uno loco permaneant laborantes et servientes et pœnitentiam agentes, secundum quod canonicè iis impositum sit.

‡ I. de Vitriaco, in Gesta Dei per Francos, t. i. Villani, l. vii, c. 144.

* Henry has taken pains in drawing a picture

crime, as more universal and characteristic than others, may be particularly noticed. All writers agree in the prevalence of judicial perjury. It seems to have almost invariably escaped human punishment; and the barriers of superstition were in this, as in every other instance, too feeble to prevent the commission of crimes. Many of the proofs by ordeal were applied to witnesses as well as those whom they accused; and undoubtedly trial by combat was preserved, in a considerable degree, on account of the difficulty experienced in securing a just cause against the perjury of witnesses. Robert, king of France, perceiving how frequently men forswore themselves upon the relics of saints, and less shocked, apparently, at the crime than at the sacrilege, caused an empty reliquary of crystal to be used, that those who touched it might incur less guilt in fact, though not in intention. Such an anecdote characterizes both the man and the times.*

The favourite diversions of the middle ages, in the intervals of war, were those of hunting and hawking. The former must in all countries be a source of pleasure; but it seems to have been enjoyed in moderation by the Greeks and the Romans. With the northern invaders, however, it was rather a predominant appetite than an amusement; it was their pride and their ornament, the theme of their songs, the object of their laws, and the business of their lives. Falconry, unknown as a diversion to the ancients, became from the fourth century an equally delightful occupation.* From the Salique and other barbarous codes of the fifth century to the close of the period under our review every age would furnish testimony to the ruling passion for these two species of chase, or, as they were sometimes called the mysteries of woods and rivers. A knight seldom stirred from his house without a falcon on his wrist or a greyhound that followed him. Thus are Harold and his attendants represented, in the famous tapestry of Bayeux. And in the monuments of those who died anywhere but on the field of battle, it is usual to find the greyhound lying at their feet, or the bird upon their wrists. Nor are the tombs of ladies without their falcon; for this diversion being of less danger and fatigue than the chase, was shared by the delicate sex.†

Love of field sports.

It was impossible to repress the eagerness with which the clergy, especially after the barbarians were tempted by rich bishoprics to take upon them the sacred functions, rushed into these secular amusements. Prohibitions of councils, however frequently repeated, produced little effect. In some instances, a particular monastery obtained a dispensation. Thus that of St. Denis, in 774, represented to Charlemagne that the flesh of hunted animals was salutary for sick monks, and that their skins would serve to bind the books in the library.‡ Reasons equally cogent, we may presume, could not be wanting in every other case. As the bishops and abbots were perfectly feudal lords, and often did not scruple to lead their vassals into the field, it was not to be expected that they should debar themselves of an innocent pastime. It was hardly such indeed, when practised at the expense of others. Alexander III., by a letter to the clergy of Berkshire, dispenses with their keeping the archdeacon in dogs and hawks during his visitation.§ This season gave jovial ecclesiastics an opportunity of trying different countries. An archbishop of York, in 1321, seems to have carried a train of two hundred persons, who were maintained at the expense of the abbeys on his road, and to have hunted with a pack of hounds from parish to parish.‖

not very favourable, of Anglo-Saxon manners.—Book II., chap. 7. This perhaps is the best chapter, as the volume is the best volume, of his unequal work. His account of the Anglo-Saxons is derived in a great degree from William of Malmsbury, who does not spare them. Their civil history, in leed, and their laws speak sufficiently against the character of that people. But the Normans had little more to boast of in respect of moral correctness. Their luxurious and dissolute habits are as much noticed as their insolence; et peccati cujusdam, ab hoc solo admodum alieni, flagrâsse infamiâ testantur veteres.—Vid. Ordericus Vitalis, p. 602. Johann. Sarisburiensis Policraticus, p. 194. Velly, Hist. de France, t. iii., p. 59. The state of manners in France under the two first races of kings, and in Italy both under the Lombards and the subsequent dynasties, may be collected from their histories, their laws, and those miscellaneous facts which books of every description contain. Neither Velly, nor Muratori, Dissert. 23, is so satisfactory as we might desire.

* Velly, Hist. de France, t. ii., p. 335. It has been observed, that Quid mores sine legibus? is as just a question as that of Horace; and that bad laws must produce bad morals. The strange practice of requiring numerous compurgators to prove the innocence of an accused person had a most obvious tendency to increase perjury.

* Muratori, Dissert. 23, t. i., p. 306. (Italian.) Beckman's Hist. of Inventions, vol. i., p. 319. Vie privée des Français, t. ii., p. 1.

† Vie privée des Français, t. i., p. 320; t. i. p. 11

‡ Idem, t. i., p. 324. § Rymer, t. i., p. 61.

‖ Whitaker's Hist. of Craven, p. 340, and of Whalley, p. 171.

The third council of Lateran, in 1180, had prohibited this amusement on such journeys, and restricted bishops to a train of forty or fifty horses.*

Though hunting had ceased to be a necessary means of procuring food, it was a very convenient resource, on which the wholesomeness and comfort, as well as the luxury of the table depended. Before the natural pastures were improved, and new kinds of fodder for cattle discovered, it was impossible to maintain the summer stock during the cold season. Hence a portion of it was regularly slaughtered and salted for winter provision. We may suppose, that when no alternative was offered but these salted meats, even the leanest venison was devoured with relish. There was somewhat more excuse, therefore, for the severity with which the lords of forests and manors preserved the beasts of chase, than if they had been considered as merely objects of sport. The laws relating to preservation of game were in every country uncommonly rigorous. They formed in England that odious system of forest-laws which distinguished the tyranny of our Norman kings. Capital punishment for killing a stag or wild boar was frequent, and perhaps warranted by law, until the charter of John.† The French code was less severe, but even Henry IV. enacted the pain of death against the repeated offence of chasing deer in the royal forests. The privilege of hunting was reserved to the nobility till the reign of Louis IX., who extended it in some degree to persons of lower birth.‡

This excessive passion for the sports of the field produced those evils which are apt to result from it; a strenuous idleness, which disdained all useful occupations, and an oppressive spirit towards the peasantry. The devastation committed under the pretence of destroying wild animals, which had been already protected in their depredations, is noticed in serious authors, and has also been the topic of popular ballads.§ What effect this must have had on agriculture, it is easy to conjecture. The levelling of forests the draining of morasses, and the extirpation of mischievous animals which inhabit them, are the first objects of man's labour in reclaiming the earth to its use; and these were forbidden by a landed aristocracy, whose control over the progress of agricultural improvement was unlimited, and who had not yet learned to sacrifice their pleasures to their avarice.

These habits of the rich, and the miserable servitude of those who cultivated the land, rendered its fertility unavailing. Predial servitude indeed, in some of its modifications, has always been the great bar to improvement. In the agricultural economy of Rome, the labouring husbandman, a menial slave of some wealthy senator, had not even that qualified interest in the soil which the tenure of villanage afforded to the peasant of feudal ages. Italy, therefore, a country presenting many natural impediments, was but imperfectly reduced into cultivation before the irruption of the barbarians.* That revolution destroyed agriculture with every other art, and succeeding calamities during five or six centuries, left the finest regions of Europe unfruitful and desolate. There are but two possible modes in which the produce of the earth can be increased; one by rendering fresh land serviceable; the other by improving the fertility of that which is already cultivated. The last is only attainable by the application of capital and of skill to agriculture: neither of which could be expected in the ruder ages of society. The former is, to a certain extent, always practicable while waste lands remain; but it was checked by laws hostile to improvement, such as the manorial and commonable rights in England, and by the general tone of manners.

Bad state of agriculture.

Till the reign of Charlemagne there were no towns in Germany, except a few that had been erected on the Rhine

* Velly, Hist. de France, t. iii., p. 236.

† John of Salisbury inveighs against the game-laws of his age, with an odd transition from the Gospel to the Pandects. Nec veriti sunt hominem pro unâ bestiolâ perdere, quem unigenitus Dei Filius sanguine redemit suo. Quæ feræ naturæ sunt, et de jure occupantium fiunt, sibi audet humana temeritas vindicare, &c.—Policraticus, p. 18.

‡ Le Grand, Vie privée des Français, t. i., p. 325.

§ For the injuries which this people sustained from the seignorial rights of the chase in the eleventh century, see the Recueil des Historiens, in the valuable preface to the eleventh volume, p. 181. This continued to be felt in France down to the revolution, to which it did not perhaps a little contribute.—(See Young's Travels in France.) The monstrous privilege of free-warren (monstrous, I mean, when not originally founded upon the property of the soil) is recognised by our own laws, though in this age it is not often that a court and jury will sustain its exercise. Sir Walter Scott's ballad of the Wild Huntsman, from a German original, is well known; and I believe there are several others in that country not dissimilar in subject.

* Muratori, Dissert. 21. This dissertation contains ample evidence of the wretched state of culture in Italy, at least in the northern parts, both before the irruption of the barbarians, and, in a much greater degree, under the Lombard kings.

and Danube by the Romans. A house with its stables and farm-buildings, surrounded by a hedge or enclosure, was called a court, or, as we find it in our law-books, a curtilage; the toft or homestead of a more genuine English dialect. One of these, with the adjacent domain of arable fields and woods, had the name of a villa or manse. Several manses composed a march; and several marches formed a pagus, or district.* From these elements in the progress of population, arose villages and towns. In France undoubtedly there were always cities of some importance. Country parishes contained several manses or farms of arable land, around a common pasture, where every one was bound by custom to feed his cattle.†

The condition even of internal trade was hardly preferable to that of agriculture. There is not a vestige perhaps to be discovered for several centuries of any considerable manufacture; I mean of working up articles of common utility to an extent beyond what the necessities of an adjacent district required.‡ Rich men kept domestic artisans among their servants; even kings, in the ninth century, had their clothes made by the women upon their farms:§ but the peasantry must have been supplied with garments and implements of labour by purchase, and every town, it cannot be doubted, had its weaver, its smith, and its currier. But there were almost insuperable impediments to any extended

Of internal trade.

traffic; the insecurity of moveable wealth, and difficulty of accumulating it; the ignorance of mutual wants; the peril of robbery in conveying merchandise, and the certainty of extortion. In the domains of every lord, a toll was to be paid in passing his bridge, or along his highway, or at his market.* These customs, equitable and necessary in their principle, became in practice oppressive, because they were arbitrary, and renewed in every petty territory which the road might intersect. Several of Charlemagne's capitularies repeat complaints of these exactions, and endeavour to abolish such tolls as were not founded on prescription.† One of them rather amusingly illustrates the modesty and moderation of the landholders. It is enacted that no one shall be compelled to go out of his way in order to pay toll at a particular bridge, when he can cross the river more conveniently at another place.‡ These provisions, like most others of that age, were unlikely to produce much amendment. It was only the milder species, however, of feudal lords who were content with the tribute of merchants. The more ravenous descended from their fortresses to pillage the wealthy traveller, or shared in the spoil of inferior plunderers, whom they both protected and instigated. Proofs occur, even in the later periods of the middle ages, when government had regained its energy, and civilization had made considerable progress, of public robberies systematically perpetrated by men of noble rank. In the more savage times, before the twelfth century, they were probably too frequent to excite much attention. It was a custom in some places to waylay travellers, and not only to plunder, but to sell them as slaves, or compel them to pay a ransom. Harold, son of Godwin, having been wrecked on the coast of Ponthieu, was imprisoned by the lord, says an historian, according to the custom of that territory.§ Germany appears to have been, upon the whole, the country where downright robbery was most unscrupulously practised by the great. Their castles, erected on almost inaccessible heights

* Schmidt, Hist. des Allem., t. i., p. 408. The following passage seems to illustrate Schmidt's account of German villages in the ninth century, though relating to a different age and country. "A toft," says Dr. Whitaker, "is a homestead in a village, so called from the small tufts of maple, elm, ash, and other wood, with which dwelling-houses were anciently overhung. Even now it is impossible to enter Craven without being struck with the insulated homesteads, surrounded by their little garths, and overhung with tufts of trees. These are the genuine tofts and crofts of our ancestors, with the substitution only of stone to the wooden crocks and thatched roofs of antiquity." —Hist. of Craven, p. 380.

† It is laid down in the Speculum Saxonicum, a collection of feudal customs which prevailed over most of Germany, that no one might have a separate pasture for his cattle unless he possessed three mansi.—Du Cange, Mansus. There seems to have been a price paid, I suppose to the lord, for agistment in the common pasture.

‡ The only mention of a manufacture, as early as the ninth or tenth centuries, that I remember to have met with, is in Schmidt, t. ii., p. 146, who says, that cloths were exported from Friseland to England and other parts. He quotes no authority, but I am satisfied that he has not advanced the fact gratuitously.

§ Schmidt, t. i., p. 411; t. ii., p. 146.

* Du Cange, Pedagium, Pontaticum, Telonium, Mercatum, Stallagium, Lastagium, &c.

† Baluz. Capit., p. 621, et alibi.

‡ Ut nullus cogatur ad pontem ire ad fluviam transeundum propter telonei causas quando ille in alio loco compendiosius illud flumen transire potest, p. 764, et alibi.

§ Eadmer apud Recueil des Historiens des Gaules, t. xi., preface, p. 192. Præ ritu illius loci a domino terræ captivitati addicitur.

among the woods, became the secure receptacles of predatory bands, who spread terror over the country. From these barbarian lords of the dark ages, as from a living model, the romancers are said to have drawn their giants and other disloyal enemies of true chivalry. Robbery indeed is the constant theme both of the Capitularies and of the Anglo-Saxon laws; one has more reason to wonder at the intrepid thirst of lucre, which induced a very few merchants to exchange the products of different regions, than to ask why no general spirit of commercial activity prevailed.

And of foreign commerce.

Under all these circumstances, it is obvious that very little oriental trade could have existed in these western countries of Europe. Destitute as they have been created, speaking comparatively, of national productions fit for exportation, their invention and industry are the great resources from which they can supply the demands of the east. Before any manufactures were established in Europe, her commercial intercourse with Egypt and Asia must of necessity have been very trifling; because, whatever inclination she might feel to enjoy the luxuries of those genial regions, she wanted the means of obtaining them. It is not therefore necessary to rest the miserable condition of oriental commerce upon the Saracen conquests, because the poverty of Europe is an adequate cause; and, in fact, what little traffic remained was carried on with no material inconvenience through the channel of Constantinople. Venice took the lead in trading with Greece and more eastern countries.* Amalfi had the second place in the commerce of those dark ages. These cities imported, besides natural productions, the fine clothes of Constantinople; yet, as this traffic seems to have been illicit, it was not probably extensive.† Their exports were gold and silver, by which, as none was likely to return, the circulating money of Europe was probably less in the eleventh century than at the subversion of the Roman empire; furs, which were obtained from the Sclavonian countries; and arms, the sale of which to pagans or Saracens was vainly prohibited by Charlemagne and by the Holy See.* A more scandalous traffic, and one that still more fitly called for prohibitory laws, was carried on in slaves. It is an humiliating proof of the degradation of Christendom, that the Venetians were reduced to purchase the luxuries of Asia by supplying the slave market of the Saracens.† Their apology would perhaps have been, that these were purchased from their heathen neighbours; but a slave-dealer was probably not very inquisitive as to the faith or origin of his victim. This trade was not peculiar to Venice. In England it was very common, even after the conquest, to export slaves to Ireland; till, in the reign of Henry II., the Irish came to a non-importation agreement, which put a stop to the practice.‡

From this state of degradation and poverty all the countries of Europe have recovered, with a progression in some respects tolerably uniform, in others more unequal; and the course of their improvement more gradual, and less de-

* Heeren has frequently referred to a work published in 1789, by Marini, entitled Storia civile e politica del Commerzio de' Veneziani, which casts a new light upon the early relations of Venice with the east. Of this book I know nothing; but a memoir by De Guignes, in the thirty-seventh volume of the Academy of Inscriptions, on the commerce of France with the east before the crusades, is singularly unproductive; the fault of the subject, not of the author.

† There is an odd passage in Luitprand's relation of his embassy from the Emperor Otho to Nicephorus Phocas. The Greeks making a display of their dress, he told them that in Lombardy the common people wore as good clothes as they. How, they said, can you procure them? Through the Venetian and Amalfitan dealers, he replied, who gain their subsistence by selling them to us. The foolish Greeks were very angry, and declared that any dealer presuming to export their fine clothes should be flogged.—Luitprandi Opera, p. 155, edit. Antwerp, 1640.

* Baluz. Capitul., p. 775. One of the main advantages which the Christian nations possessed over the Saracens was the coat of mail, and other defensive armour; so that this prohibition was founded upon very good political reasons.

† Schmidt, Hist. des Allem., t. ii., p. 146. Heeren, sur l'Influence des Croisades, p. 316. In Baluze we find a law of Carloman, brother to Charlemagne; Ut mancipia Christiana paganis non vendantur.—Capitularia, t. i., p. 150, vide quoque, p. 361.

‡ William of Malmsbury accuses the Anglo-Saxon nobility of selling their female servants, even when pregnant by them, as slaves to foreigners, p. 102. I hope there were not many of these Yaricoes; and should not perhaps have given credit to an historian, rather prejudiced against the English, if I had not found too much authority for the general practice. In the canons of a council at London, in 1102, we read: Let no one from hence forth presume to carry on that wicked traffic, by which men of England have hitherto been sold like brute animals.—Wilkins's Concilia, t. i., p. 383. And Giraldus Cambrensis says that the English before the conquest were generally in the habit of selling their children and other relations to be slaves in Ireland, without having even the pretext of distress or famine, till the Irish, in a national synod, agreed to emancipate all the English slaves in the kingdom, id., p. 471. This seems to have been designed to take away all pretext for the threatened invasion of Henry II.—Lyttleton, vol. iii., p. 70.

pendant upon conspicuous civil revolutions than their decline, affords one of the most interesting subjects into which a philosophical mind can inquire. The commencement of this restoration has usually been dated from about the close of the eleventh century; though it is unnecessary to observe, that the subject does not admit of any thing approximating to chronological accuracy. It may therefore be sometimes not improper to distinguish the six first of the ten centuries, which the present work embraces, under the appellation of the *dark* ages; an epithet which I do not extend to the twelfth and three following. In tracing the decline of society from the subversion of the Roman empire, we have been led, not without connexion, from ignorance to superstition, from superstition to vice and lawlessness, and from thence to general rudeness and poverty. I shall pursue an inverted order in passing along the ascending scale, and class the various improvements which took place between the twelfth and fifteenth centuries under three principal heads, as they relate to the wealth, the manners, or the taste and learning of Europe. Different arrangements might probably be suggested, equally natural and convenient; but in the disposition of topics that have not always an unbroken connexion with each other, no method can be prescribed as absolutely more scientific than the rest. That which I have adopted appears to me as philosophical and as little liable to transitions as any other

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PART II.

Progress of Commercial Improvement in Germany, Flanders, and England.—In the North of Europe. —In the Countries upon the Mediterranean Sea. —Maritime Laws.—Usury.—Banking Companies. — Progress of Refinement in Manners. — Domestic Architecture. — Ecclesiastical Architecture.—State of Agriculture in England.—Value of Money.—Improvement of the Moral Character of Society — its Causes. — Police.—Changes in Religious Opinion.—Various Sects. —Chivalry—its Progress, Character, and Influence.—Causes of the Intellectual Improvement of European Society.—1. The Study of Civil Law.—2. Institution of Universities—their Celebrity. — Scholastic Philosophy.—3. Cultivation of Modern Languages. — Provençal Poets. — Norman Poets.—French Prose Writers.—Italian —early Poets in that Language. — Dante. — Petrarch.—English Language—its Progress.—Chaucer.—4. Revival of Classical Learning.—Latin writers of the Twelfth Century.—Literature of the Fourteenth Century. —Greek Literature — its Restoration in Italy —Invention of Printing.

European commerce

The geographical position of Europe naturally divides its maritime commerce into two principal regions; one comprehending those countries which border on the Baltic, the German, and the Atlantic oceans, another, those situated around the Mediterranean Sea. During the four centuries which preceded the discovery of America, and especially the two former of them, this separation was more remarkable than at present, inasmuch as their intercourse, either by land or sea, was extremely limited. To the first region belonged the Netherlands, the coasts of France, Germany, and Scandinavia, and the maritime districts of England. In the second we may class the provinces of Valencia and Catalonia, those of Provence and Languedoc, and the whole of Italy.

Woollen manufacture of Flanders.

1. The former, or northern division, was first animated by the woollen manufacture of Flanders. It is not easy either to discover the early beginnings of this, or to account for its rapid advancement. The fertility of that province and its facilities of interior navigation were doubtless necessary causes; but there must have been some temporary encouragement from the personal character of its sovereigns, or other accidental circumstances. Several testimonies to the flourishing condition of Flemish manufactures occur in the twelfth century, and some might perhaps be found even earlier.* A writer of the thirteenth asserts that all the world was clothed from English wool wrought in Flanders.† This indeed is an exaggerated vaunt; but the Flemish stuffs were probably sold wherever the sea or a navigable river permitted them to be carried. Cologne was the chief trading city upon the Rhine; and its merchants, who had been considerable even under the Emperor Henry IV., established a factory at London in 1220. The woollen manufacture, notwithstanding frequent wars and the impolitic regulations of magistrates,‡ continued to

* Macpherson's Annals of Commerce, vol. i., p. 270. Meyer ascribes the origin of Flemish trade to Baldwin, count of Flanders, in 958, who established markets at Bruges and other cities. Exchanges were in that age, he says, chiefly effected by barter, little money circulating in Flanders.—Annales Flandrici, fol. 18 (edit. 1561).

† Matthew Westmonast. apud Macpherson's Annals of Commerce, vol. i., p. 415.

‡ Such regulations scared away those Flemish weavers who brought their art into England under Edward III.—Macpherson, p. 467, 494, 546. Several years later, the magistrates of Ghent are said by Meyer (Annales Flandrici, fol. 156) to have imposed a tax on every loom. Though the seditious

flourish in the Netherlands (for Brabant and Hainault shared it in some degree with Flanders), until England became not only capable of supplying her own demand, but a rival in all the marts of Europe. All Christian kingdoms, and even the Turks themselves, says an historian of the sixteenth century, lamented the desperate war between the Flemish cities and their Count Louis, that broke out in 1380. For at that time Flanders was a market for the traders of all the world. Merchants from seventeen kingdoms had their settled domiciles at Bruges, besides strangers from almost unknown countries who repaired thither.* During this war, and on all other occasions, the weavers both of Ghent and Bruges distinguished themselves by a democratical spirit, the consequence no doubt of their numbers and prosperity.† Ghent was one of the largest cities in Europe, and in the opinion of many the best situated.‡ But Bruges, though in circuit but half the former, was more splendid in its buildings, and the seat of far more trade; being the great staple both of Mediterranean and northern merchandise.◊ Antwerp, which early in the sixteenth century drew away a large part of this commerce from Bruges, was not considerable in the preceding ages; nor were the towns of Zealand and Holland much noted except for their fisheries, though those provinces acquired in the fifteenth century some share of the woollen manufacture.

For the two first centuries after the conquest, our English towns, as has been observed in a different place, made some forward steps towards improvement, though still very inferior to those of the continent. Their commerce was almost confined to the exportation of wool, the great staple commodity of England, upon which, more than any other, in its raw or manufactured state, our wealth has been founded. A woollen manufacture, however, indisputably existed under Henry II.;* it is noticed in regulations of Richard I.; and by the importation of woad under John, it may be inferred to have still flourished. The disturbances of the next reign, perhaps, or the rapid elevation of the Flemish towns, retarded its growth; though a remarkable law was passed by the Oxford parliament in 1261, prohibiting the export of wool and the importation of cloth. This, while it shows the deference paid by the discontented barons, who predominated in that parliament, to their confederates the burghers, was evidently too premature to be enforced. We may infer from it, however, that cloths were made at home, though not sufficiently for the peoples' consumption.†

Export of wool from England.

Prohibitions of the same nature, though with a different object, were frequently imposed on the trade between England and Flanders by Edward I. and his son. As their political connexions fluctuated, these princes gave full liberty and settlement to the Flemish merchants, or banished them at once from the country.‡ Nothing could be more injurious to England than this arbitrary vacillation. The Flemings were in every respect our natural allies; but besides those connexions with France, the constant enemy of Flanders, into which both the Edwards occasionally fell, a mutual alienation had been produced by the trade of the former people with Scotland, a trade too lucra-

spirit of the weavers' company had perhaps justly provoked them, such a tax on their staple manufacture was a piece of madness, when English goods were just coming into competition.

* Terrâ marique mercatura, rerumque commercia et quæstus peribant. Non solum totius Europæ mercatores, verum etiam ipsi Turcæ aliæque sepositæ nationes ob bellum istud Flandriæ magno afficiebantur dolore. Erat nempe Flandria totius prope orbis stabile mercatoribus emporium. Septemdecim regnorum negotiatores tum Brugis sua certa habuere domicilia ac sedes, præter complures incognitas pæne gentes quæ undique confluebant. -Meyer, fol. 205. ad ann. 1385.

† Meyer. Froissart, Comines

‡ It contained, according to Ludovico Guicciardini, 35,000 houses, and the circuit of its walls was 45,640 Roman feet.—Description des Pais Bas, p. 356, &c. (edit. 1609). Part of this enclosure was not built upon. The population of Ghent is reckoned by Guicciardini at 70,000, but in his time it had greatly declined. It is certainly, however, much exaggerated by earlier historians. And I entertain some doubt as to Guicciardini's estimate of the number of houses. If at least he was accurate, more than half of the city must since have been demolished or become uninhabited, which its present appearance does not indicate; for Ghent, though not very flourishing, by no means presents the decay and dilapidation of an Italian town.

◊ Guicciardini, p. 262. Mém. de Comines, l. v., c. 17. Meyer, fol. 354. Macpherson's Annals of Commerce, vol i., p. 647, 651.

* Blomefield, the historian of Norfolk, thinks that a colony of Flemings settled as early as this reign at Worsted, a village in that county, and immortalized its name by their manufacture. It soon reached Norwich, though not conspicuous till the reign of Edward I.—Hist. of Norfolk, vol. ii. Macpherson speaks of it for the first time in 1327. There were several gilds of weavers in the time of Henry II.—Lyttleton, vol. ii., p. 174.

† Macpherson's Annals of Commerce, vol. i., p. 412, from Walter Hemingford. I am considerably indebted to this laborious and useful publication which has superseded that of Anderson.

‡ Rymer, t. ii., p. 32, 50, 737, 949, 965; t. iii., p. 533, 1106, et alibi.

tive to be resigned at the King of England's request.* An early instance of that conflicting selfishness of belligerants and neutrals, which was destined to aggravate the animosities and misfortunes of our own time!†

English woollen manufacture.

A more prosperous era began with Edward III., the father, as he may almost be called, of English commerce, a title not indeed more glorious, but by which he may perhaps claim more of our gratitude than as the hero of Crecy. In 1331, he took advantage of discontents among the manufacturers of Flanders to invite them as settlers into his dominions.‡ They brought the finer manufacture of woollen cloths, which had been unknown in England. The discontents alluded to resulted from the monopolizing spirit of their corporations, who oppressed all artisans without the pale of their community. The history of corporations brings home to our minds one cardinal truth, that political institutions have very frequently but a relative and temporary usefulness, and that what forwarded improvement during one part of its course, may prove to it in time a most pernicious obstacle. Corporations in England, we may be sure, wanted nothing of their usual character; and it cost Edward no little trouble to protect his colonists from the selfishness, and from the blind nationality of the vulgar.§ The emigration of Flemish weavers into England continued during this reign, and we find it mentioned at intervals for more than a century.

Increase of English commerce.

Commerce now became, next to liberty, the leading object of parliament. For the greater part of our statutes from the accession of Edward III. bear relation to this subject; not always well devised, or liberal, or consistent, but by no means worse in those respects than such as have been enacted in subsequent ages. The occupation of a merchant became honourable; and notwithstanding the natural jealousy of the two classes, he was placed in some measure on a footing with landed proprietors. By the statute of apparel, in 37 Edw. III., merchants and artificers who had five hundred pounds value in goods and chattels might use the same dress as squires of one hundred pounds a year. And those who were worth more than this might dress like men of double that estate. Wool was still the principal article of export and source of revenue. Subsidies granted by every parliament upon this article were, on account of the scarcity of money, commonly taken in kind. To prevent evasion of this duty seems to have been the principle of those multifarious regulations, which fix the staple or market for wool, in certain towns either in England, or, more commonly, on the continent. To these all wool was to be carried, and the tax was there collected. It is not easy, however, to comprehend the drift of all the provisions relating to the staple, many of which tend to benefit foreign at the expense of English merchants. By degrees, the exportation of woollen cloths increased so as to diminish that of the raw material, but the latter was not absolutely prohibited during the period under review;* although some restrictions were imposed upon it by Edward IV. For a much earlier statute, in the 11th of Edward III., making the exportation of wool a capital felony, was in its terms provisional, until it should be otherwise ordered by the council; and the king almost immediately set it aside.†

* Rymer, t. iii., p. 759. A Flemish factory was established at Berwick about 1286.—Macpherson.

† In 1295, Edward I. made masters of neutral ships in English ports find security not to trade with France.—Rymer, t. ii., p. 679.

‡ Rymer, t. iv., p. 591, &c. Fuller draws a notable picture of the inducements held out to the Flemings. "Here they should feed on fat beef and mutton, till nothing but their fulness should stint their stomachs; their beds should be good, and their bedfellows better, seeing the richest yeomen in England would not disdain to marry their daughters unto them, and such the English beauties that the most envious foreigners could not but commend them."—Fuller's Church History, quoted in Blomefield's Hist. of Norfolk.

§ Rymer, t. v., p. 137, 430, 540

* In 1409, woollen cloths formed great part of our exports, and were extensively used over Spain and Italy. And in 1449, English cloths having been prohibited by the Duke of Burgundy, it was enacted, that, until he should repeal this ordinance, no merchandise of his dominions should be admitted into England.—27 H. VI., c. 1. The system of prohibiting the import of foreign wrought goods was acted upon very extensively in Edward IV.'s reign.

† Stat. 11 E. III., c. 1. Blackstone says that transporting wool out of the kingdom, to the detriment of our staple manufacture, was forbidden at common law (vol. iv., c. 19), not recollecting that we had no staple manufactures in the ages when the common law was formed, and that the export of wool was almost the only means by which this country procured silver, or any other article of which it stood in need from the continent. In fact the landholders were so far from neglecting this source of their wealth, that a minimum was fixed upon it by a statute of 1343 (repealed indeed the next year, 18 E. III., c. 3), below which price it was not to be sold; from a laudable apprehension, as it seems, that foreigners were getting it too cheap. And this was revived in the 32d of H. VI

A manufacturing district, as we see in our own country, sends out, as it were, suckers into all its neighbourhood. Accordingly, the woollen manufacture spread from Flanders along the banks of the Rhine, and into the northern provinces of France.* I am not, however, prepared to trace its history in these regions. In Germany, the privileges conceded by Henry V. to the free cities, and especially to their artisans, gave a soul to industry; though the central parts of the empire were, for many reasons, very ill calculated for commercial enterprise during the middle ages.† But the French towns were never so much emancipated from arbitrary power as those of Germany or Flanders; and the evils of exorbitant taxation, with those produced by the English wars, conspired to retard the advance of manufactures in France. That of linen made some progress; but this work was still perhaps chiefly confined to the labour of female servants.‡

Manufactures of France and Germany.

The manufactures of Flanders and England found a market not only in these adjacent countries, but in a part of Europe which for many ages had only been known enough to be dreaded. In the middle of the eleventh century, a native of Bremen, and a writer much superior to most others of his time, was almost entirely ignorant of the geography of the Baltic; doubting whether any one had reached Russia by that sea, and reckoning Esthonia and Courland among its islands.* But in one hundred years more, the maritime regions of Mecklenburg and Pomerania, inhabited by a tribe of heathen Sclavonians, were subdued by some German princes; and the Teutonic order some time afterward, having conquered Prussia, extended a line of at least comparative civilization as far as the Gulf of Finland. The first town erected on the coasts of the Baltic was Lubec, which owes its foundation to Adolphus, count of Holstein, in 1140. After several vicissitudes, it became independent of any sovereign but the emperor in the thirteenth century. Hamburgh and Bremen, upon the other side of the Cimbric peninsula, emulated the prosperity of Lubec; the former city purchased independence of its bishop in 1225. A colony from Bremen founded Riga in Livonia, about 1162. The city of Dantzic grew into importance about the end of the following century. Koningsberg was founded by Ottecar, king of Bohemia, in the same age.

Baltic trade.

But the real importance of these cities is to be dated from their famous union into the Hanseatic confederacy. The origin of this is rather obscure, but it may certainly be nearly referred in point of time to the middle of the thirteenth century,† and accounted for by the necessity of mutual defence, which piracy by sea and pillage by land had taught the merchants of Germany. The nobles endeavoured to obstruct the formation of this league, which indeed was in great measure designed to withstand their exactions. It powerfully maintained the influence which the free imperial cities were at this time acquiring. Eighty of the most considerable places constituted the Hanseatic confederacy, divided into four colleges, whereof Lubec, Cologne, Brunswick, and Dantzic were the leading towns. Lubec held the chief rank, and became, as it were, the patriarchal see of the league; whose province it was to preside in all general discussions for

though the act is not printed among the statutes.—Rot Parl., t. v., p. 275. The exportation of sheep was prohibited in 1338.—Rymer, t. v., p. 36· and by act of parliament in 1425.—3 H. VI., c. 2. But this did not prevent our improving the wool of a foreign country to our own loss. It is worthy of notice, that English wool was superior to any other for fineness during these ages. Henry II., in his patent to the Weavers' Company, directs that if any weaver mingled Spanish wool with English, it should be burnt by the lord mayor.—Macpherson, p. 382. An English flock, transported into Spain about 1348, is said to have been the source of the fine Spanish wool, ibid., p. 539. But the superiority of English wool, even as late as 1438, is proved by the laws of Barcelona, forbidding its adulteration, p. 654. Another exportation of English sheep to Spain took place about 1465, in consequence of a commercial treaty.—Rymer, t. xi., p. 534, et alibi. In return, Spain supplied England with horses, her breed of which was reckoned the best in Europe; so that the exchange was tolerably fair.—Macpherson, p. 596. The best horses had been very dear in England, being imported from Spain and Italy, ibid.

* Schmidt, t. iv., p. 18.

† Considerable woollen manufactures appear to have existed in Picardy about 1315.—Macpherson, ad annum. Capmany, t. iii., part 2, p. 151.

‡ The sheriffs of Wiltshire and Sussex are directed, in 1253, to purchase for the king 1000 ells of fine linen, lineæ telæ pulchræ et delicatæ. This Macpherson supposes to be of domestic manufacture, which, however, is not demonstrable. Linen was made at that time in Flanders; and as late as 1417, the fine linen used in England was imported from France and the Low Countries.—Macpherson, from Rymer, t. ix., p. 334. Velly's history is defective in giving no account of the French commerce and manufactures, or at least none that is at all satisfactory.

* Adam Bremensis, de Situ Daniæ, p. 13. (Elzevir edit.)

† Schmidt, t. iv., p. 8. Macpherson, p. 392. The latter writer thinks they were not known by the name of Hanse so early

mercantile, political or military purposes, and to carry them into execution. The league had four principal factories in foreign parts, at London, Bruges, Bergen, and Novogorod; endowed by the sovereigns of those cities with considerable privileges, to which every merchant belonging to a Hanseatic town was entitled.* In England the German guildhall or factory was established by concession of Henry III.; and in later periods, the Hanse traders were favoured above many others in the capricious vacillations of our mercantile policy.† The English had also their factories on the Baltic coast as far as Prussia, and in the dominions of Denmark.‡

This opening of a northern market powerfully accelerated the growth of our own commercial opulence, especially after the woollen manufacture had begun to thrive. From about the middle of the fourteenth century, we find continual evidences of a rapid increase in wealth. Thus, in 1363, Picard, who had been lord mayor some years before, entertained Edward III and the Black Prince, the kings of France, Scotland, and Cyprus, with many of the nobility, at his own house in the Vintry, and presented them with handsome gifts.§ Philpot, another eminent citizen in Richard II.'s time, when the trade of England was considerably annoyed by privateers, hired 1000 armed men, and despatched them to sea, where they took fifteen Spanish vessels with their prizes.‖ We find Richard obtaining a great deal from private merchants and trading towns. In 1379 he got £5000 from London, 1000 marks from Bristol, and in proportion from smaller places. In 1386 London gave £4000 more, and 10,000 marks in 1397.¶ The latter sum was obtained also for the coronation of Henry VI.** Nor were the contributions of individuals contemptible, considering the high value of money. Hinde, a citizen of London, lent to Henry IV. £2000 in 1407, and Whittington one half of that sum. The merchants of the staple advanced £4000 at the same time.†† Our commerce continued to be regularly and rapidly progressive during the fifteenth century. The famous Canynges of Bristol, under Henry VI. and Edward IV., had ships of 900 tons burden.* The trade and even the internal wealth of England reached so much higher a pitch in the reign of the last mentioned king than at any former period, that we may perceive the wars of York and Lancaster to have produced no very serious effect on national prosperity. Some battles were doubtless sanguinary; but the loss of lives in battle is soon repaired by a flourishing nation; and the devastation occasioned by armies was both partial and transitory.

Rapid progress of English trade.

A commercial intercourse between these northern and southern regions of Europe began about the early part of the fourteenth century, or, at most, a little sooner. Until, indeed, the use of the magnet was thoroughly understood, and a competent skill in marine architecture, as well as navigation, acquired, the Italian merchants were scarce likely to attempt a voyage perilous in itself, and rendered more formidable by the imaginary difficulties which had been supposed to attend an expedition beyond the straits of Hercules. But the English, accustomed to their own rough seas, were always more intrepid, and probably more skilful navigators. Though it was extremely rare, even in the fifteenth century, for an English trading vessel to appear in the Mediterranean,† yet a famous

Intercourse with the south of Europe.

* Pfeffel, t. i., p. 443. Schmidt, t. iv., p. 18; t. v., p. 512. Macpherson's Annals, vol. i., p. 693.
† Macpherson, vol. i., passim.
‡ Rymer, t. viii., p. 360.
§ Macpherson (who quotes Stow), p. 415.
‖ Walsingham, p. 211.
¶ Rymer, t. vii., p. 210, 341; t viii., p. 9.
** Id. t. x., p. 461. †† Id. t. viii., p. 483

* Macpherson, p. 667.
† Richard III., in 1485, appointed a Florentine merchant to be English consul at Pisa, on the ground that some of his subjects intended to trade to Italy.—Macpherson, p. 705, from Rymer. Perhaps we cannot positively prove the existence of a Mediterranean trade at an earlier time; and even this instrument is not conclusive But a considerable presumption arises from two documents in Rymer, of the year 1412, which inform us of a great shipment of wool and other goods made by some merchants of London for the Mediterranean under supercargoes, whom, it being a new undertaking, the king expressly recommended to the Genoese republic. But that people, impelled probably by commercial jealousy, seized the vessels and their cargoes; which induced the king to grant the owners letters of reprisal against all Genoese property.—Rymer, t. viii., p. 717, 773. Though it is not perhaps evident that the vessels were English, the circumstances render it highly probable. The bad success, however, of this attempt might prevent its imitation. A Greek author, about the beginning of the fifteenth century, reckons the Ἰγγληνοι among the nations who traded to a port in the Archipelago.—Gibbon, vol xii., p. 52. But these enumerations are generally swelled by vanity or the love of exaggeration; and a few English sailors on board a foreign vessel would justify the assertion. Benjamin of Tudela, a Jewish traveller, pretends that the port of Alexandria, about 1160, contained vessels not only from England, but from Russia, and even *Cracow*.—Harris's Voyages, vol. i., p. 554.

military armament, that was destined for the crusade of Richard I., displayed at a very early time the seamanship of our countrymen. In the reign of Edward II., we find mention in Rymer's collection of Genoese ships trading to Flanders and England. His son was very solicitous to preserve the friendship of that opulent republic; and it is by his letters to his senate, or by royal orders restoring ships unjustly seized, that we come by a knowledge of those facts which historians neglect to relate. Pisa shared a little in this traffic, and Venice more considerably; but Genoa was beyond all competition at the head of Italian commerce in these seas during the fourteenth century. In the next, her general decline left it more open to her rival; but I doubt whether Venice ever maintained so strong a connexion with England. Through London, and Bruges, their chief station in Flanders, the merchants of Italy and of Spain transported oriental produce to the farthest parts of the north. The inhabitants of the Baltic coast were stimulated by the desire of precious luxuries which they had never known; and these wants, though selfish and frivolous, are the means by which nations acquire civility, and the earth is rendered fruitful of its produce. As the carriers of this trade, the Hanseatic merchants resident in England and Flanders derived profits through which eventually, of course, those countries were enriched. It seems that the Italian vessels unloaded at the marts of London or Bruges, and that such parts of their cargoes as were intended for a more northern trade came there into the hands of the German merchants. In the reign of Henry VI., England carried on a pretty considerable traffic with the countries around the Mediterranean, for whose commodities her wool and woollen clothes enabled her to pay.

Commerce of the Mediterranean countries.

The commerce of the southern division, though it did not, I think, produce more extensively beneficial effects upon the progress of society, was both earlier and more splendid than that of England and the neighbouring countries. Besides Venice, which has been mentioned already, Amalfi kept up the commercial intercourse of Christendom with the Saracen countries before the first crusade.* It was the singular fate

Amalfi.

of this city to have filled up the interval between two periods of civilization, in neither of which she was destined to be distinguished. Scarcely known before the end of the sixth century, Amalfi ran a brilliant career, as a free and trading republic, which was checked by the arms of a conqueror in the middle of the twelfth. Since her subjugation by Roger, king of Sicily, the name of a people who for a while connected Europe with Asia has hardly been repeated, except for two discoveries falsely imputed to them, those of the Pandects and of the compass.

But the decline of Amalfi was amply compensated to the rest of Italy by the constant elevation of Pisa, Genoa, and Venice in the twelfth and ensuing ages. The crusades led immediately to this growing prosperity of the commercial cities. Besides the profit accruing from so many naval armaments which they supplied, and the continual passage of private adventurers in their vessels, they were enabled to open a more extensive channel of oriental traffic than had hitherto been known. These three Italian republics enjoyed immunities in the Christian principalities of Syria; possessing separate quarters in Acre, Tripoli, and other cities, where they were governed by their own laws and magistrates. Though the progress of commerce must, from the condition of European industry, have been slow, it was uninterrupted; and the settlements in Palestine were becoming important as factories, a use of which Godfrey and Urban little dreamed, when they were lost through the guilt and imprudence of their inhabitants.* Villani laments the injury sustained by commerce in consequence of the capture of Acre, "situated, as it was, on the coast of the Mediterranean, in the centre of Syria, and, as we might say, of the habitable world, a haven for all merchandise, both from the east and the west, which all the nations of the earth frequented for this trade"†

Pisa, Genoa, Venice.

* The Amalfitans are thus described by William of Apulia, apud Muratori, Dissert. 30.

Urbs hæc dives opum, populoque referta videtur
Nulla magis locuples argento, vestibus auro.
Partibus innumeris ac plurimus rate moratur
Nauta, maris cœlique vias aperire peritus.
Huc et Alexandri diversa ferunt ab urbe,
Regis et Antiochi. Hæc [etiam?] freta plurima transit.
Hic Arabes, Indi, Siculi noscuntur, et Afri
Hæc gens est totum prope nobilitata per orbem,
Et mercanda ferens, et amans mercata referre.

* The inhabitants of Acre were noted, in an age not very pure, for the excess of their vices. In 1291 they plundered some of the subjects of a neighbouring Mahometan prince, and refusing reparation, the city was besieged and taken by assault —Muratori, ad ann. Gibbon, c. 59

† Villani, lib. vii., c. 144.

But the loss was soon retrieved, not perhaps by Pisa and Genoa, but by Venice, who formed connexions with the Saracen governments, and maintained her commercial intercourse with Syria and Egypt by their license, though subject probably to heavy exactions. Sanuto, a Venetian author at the beginning of the fourteenth century, has left a curious account of the Levant trade which his countrymen carried on at that time. Their imports it is easy to guess, and it appears that timber, brass, tin, and lead, as well as the precious metals, were exported to Alexandria, besides oil, saffron, and some of the productions of Italy, and even wool and woollen cloths.* The European side of the account had therefore become respectable.

The commercial cities enjoyed as great privileges at Constantinople as in Syria, and they bore an eminent part in the vicissitudes of the eastern empire. After the capture of Constantinople by the Latin crusaders, the Venetians, having been concerned in that conquest, became of course the favoured traders under the new dynasty; possessing their own district in the city, with their magistrate or podestà, appointed at Venice, and subject to the parent republic. When the Greeks recovered the seat of their empire, the Genoese, who from jealousy of their rivals had contributed to that revolution, obtained similar immunities. This powerful and enterprising state, in the fourteenth century, sometimes the enemy of the Byzantine court, maintained its independent settlement at Pera. From thence she spread her sails into the Euxine, and, planting a colony at Caffa in the Crimea, extended a line of commerce with the interior regions of Asia, which even the skill and spirit of our own times have not yet been able to revive.†

The French provinces which border on the Mediterranean Sea partook in the advantages which it offered. Not only Marseilles, whose trade had continued in a certain degree throughout the worst ages, but Narbonne, Nismes, and especially Montpelier, were distinguished for commercial prosperity.* A still greater activity prevailed in Catalonia. From the middle of the thirteenth century (for we need not trace the rudiments of its history) Barcelona began to emulate the Italian cities in both the branches of naval energy, war and commerce. Engaged in frequent and severe hostilities with Genoa, and sometimes with Constantinople, while their vessels traded to every part of the Mediterranean, and even of the English channel, the Catalans might justly be reckoned among the first of maritime nations. The commerce of Barcelona has never since attained so great a height as in the fifteenth century.†

The introduction of a silk manufacture at Palermo, by Roger Guiscard, in 1148, gave perhaps the earliest impulse to the industry of Italy. Nearly about the same time, the Genoese plundered two Moorish cities of Spain from which they derived the same art. In the next age, this became a staple manufacture of the Lombard and Tuscan republics, and the cultivation of mulberries was enforced by their laws.‡ Woollen stuffs, though the trade was perhaps less conspicuous than that of Flanders, and though many of the coarser kinds were imported from thence, employed a multitude of workmen in Italy, Catalonia, and the south of France.§ Among the trading companies into which the mid-

Their manufactures.

* Macpherson, p. 490.

† Capmany, Memorias Historicas, t. iii., preface, p. 11; and part 2, p. 131. His authority is Balducci Pegalotti, a Florentine writer upon commerce about 1340, whose work I have never seen. It appears from Balducci that the route to China was from Azoph to Astrakan, and thence by a variety of places which cannot be found in modern maps, to Cambalu, probably Pekin, the capital city of China, which he describes as being one hundred miles in circumference. The journey was of rather more than eight months, going and returning; and he assures us it was perfectly secure, not only for caravans, but for a single traveller with a couple of interpreters and a servant. The Venetians had also a settlement in the Crimea, and appear, by a passage in Petrarch's letters, to have possessed some of the trade through Tartary. In a letter written from Venice, after extolling in too rhetorical a manner the commerce of that republic, he mentions a particular ship that had just sailed for the Black Sea. Et ipsa quidem Tanaim it visura, nostri enim maris navigatio non ultra tenditur, eorum vero aliqui, quos hæc fert, illic iter [instituent] eam egressuri, nec antea substituri, quàm Gange et Caucaso superato, ad Indos atque extremos Seres et Orientalem perveniatur Oceanum. En quo ardens et inexplebilis habendi sitis hominum mentes rapit!—Petrarcæ Opera, Senil., l. ii. ep. 3, p. 760, edit. 1581.

* Hist. de Languedoc, t. iii., p. 531; t. iv., p. 517. Mém. de l'Acad. des Inscriptions, t. xxxvii.

† Capmany, Memorias Historicas de Barcelona, t. i., part 2. See particularly p. 36.

‡ Muratori, Dissert. 30. Denina, Rivoluzione d'Italia, l. xiv., c. 11. The latter writer is of opinion that mulberries were not cultivated as an important object till after 1300, nor even to any great extent till after 1500; the Italian manufacturers buying most of their silk from Spain or the Levant.

§ The history of Italian states, and especially Florence, will speak for the first country. Capmany attests the woollen manufacture of the second.—Mem. Hist. de Barcel., t. i., part 3, p. 7, &c.; and Vaissette that of Carcasonne and its vicinity.—Hist. de Lang., t. iv., p. 517.

dling ranks were distributed, those concerned in silk and woollens were most numerous and honourable.*

Invention of the mariner's compass.

A property of a natural substance, long overlooked even though it attracted observation by a different peculiarity, has influenced by its accidental discovery the fortunes of mankind, more than all the deductions of philosophy. It is perhaps impossible to ascertain the epoch when the polarity of the magnet was first known in Europe. The common opinion, which ascribes its discovery to a citizen of Amalfi in the fourteenth century, is undoubtedly erroneous. Guiot de Provins, a French poet, who lived about the year 1200, or, at the latest, under St. Louis, describes it in the most unequivocal language. James de Vitry, a bishop in Palestine, before the middle of the thirteenth century, and Guido Guinizzelli, an Italian poet of the same time, are equally explicit. The French, as well as Italians, claim the discovery as their own; but whether it were due to either of these nations, or rather learned from their intercourse with the Saracens, is not easily to be ascertained.† For some time, perhaps, even this wonderful improvement in the art of navigation might not be universally adopted by vessels sailing within the Mediterranean, and accustomed to their old system of observations. But when it became more established, it naturally inspired a more fearless spirit of adventure. It was not, as has been mentioned, till the beginning of the fourteenth century, that the Genoese and other nations around that inland sea steered into the Atlantic Ocean towards England and Flanders. This intercourse with the northern countries enlivened their trade with the Levant by the exchange of productions which Spain and Italy do not supply, and enriched the merchants by means of whose capital the exports of London and of Alexandria were conveyed into each other's harbours.

Maritime laws.

The usual risks of navigation, and those incident to commercial adventure, produce a variety of questions in every system of jurisprudence, which, though always to be determined, as far as possible, by principles of natural justice, must in many cases depend upon established customs. These customs of maritime law were anciently reduced into a code by the Rhodians, and the Roman emperors preserved or reformed the constitutions of that republic It would be hard to say how far the tradition of this early jurisprudence survived the decline of commerce in the darker ages; but after it began to recover itself, necessity suggested, or recollection prompted, a scheme of regulations resembling in some degree, but much more enlarged than those of antiquity. This was formed into a written code, Il Consolato del Mare, not much earlier, probably, than the middle of the thirteenth century; and its promulgation seems rather to have proceeded from the citizens of Barcelona than from those of Pisa or Venice, who have also claimed to be the first legislators of the sea.*

* None were admitted to the rank of burgesses in the towns of Aragon who used any manual trade, with the exception of dealers in fine cloths. The woollen manufacture of Spain did not at any time become a considerable article of export, nor even supply the internal consumption, as Capmany has well shown.—Memorias Historicas, t. iii., p. 325, et seqq., and Edinburgh Review, vol. x.

† Boucher, the French translator of Il Consolato del Mare, says, that Edrissi, a Saracen geographer, who lived about 1100, gives an account, though in a confused manner, of the polarity of the magnet, t. ii., p. 280. However, the lines of Guiot de Provins are decisive. These are quoted in Hist. Littéraire de la France, t. ix., p. 199; Mém. de l'Acad. des Inscript., t. xxi., p. 192, and several other works. Guinizzelli has the following passage, in a canzone quoted by Ginguené, Hist. Littéraire de l'Italie, t. i., p. 413.

"In quelle parti sotto tramontana,
Sono li monti della calamita,
Che dan virtute all' aere
Di trarre il ferro; ma perchè lontana,
Vole di simil pietra aver aita,
A far la adoperare,
E dirizzar lo ago in ver la stella."

We cannot be diverted by the nonsensical theory these lines contain, from perceiving the positive testimony of the last verse to the poet's knowledge of the polarity of the magnet. But, if any doubt could remain, Tiraboschi, t. iv., p. 171, has fully established, from a series of passages, that this phenomenon was well known in the thirteenth century, and puts an end altogether to the pretensions of Flavio Gioja, if such a person ever existed. See also Macpherson's Annals, p. 364 and 418. It is provoking to find an historian like Robertson asserting without hesitation, that this citizen of Amalfi was the inventor of the compass, and thus accrediting an error which had long before been detected.

—It is a singular circumstance, and only to be explained by the obstinacy with which men are apt to reject improvement, that the magnetic needle was not generally adopted in navigation till very long after the discovery of its properties; and even after their peculiar importance had been perceived. The writers of the thirteenth century who mention the polarity of the needle, mention also its use in navigation; yet Capmany has found no distinct proof of its employment till 1403, and does not believe that it was frequently on board Mediterranean ships at the latter part of the preceding age. —Memorias Historicas, t. iii, p. 70. Perhaps however he has inferred too much from his negative proof: and this subject seems open to further inquiry.

* Boucher supposes it to have been compiled at

Besides regulations simply mercantile, this system has defined the mutual rights of neutral and belligerant vessels, and thus laid the basis of the positive law of nations in its most important and disputed cases. The King of France and Count of Provence solemnly acceded to this maritime code, which hence acquired a binding force within the Mediterranean Sea; and in most respects, the law merchant of Europe is at present conformable to its provisions. A set of regulations, chiefly borrowed from the Consolato, was compiled in France under the reign of Louis IX., and prevailed in their own country. These have been denominated the laws of Oleron, from an idle story that they were enacted by Richard I., while his expedition to the Holy Land lay at anchor in that island.* Nor was the north without its peculiar code of maritime jurisprudence; namely, the ordinances of Wisbuy, a town in the isle of Gothland, principally compiled from those of Oleron, before the year 1400, by which the Baltic traders were governed.†

Frequency of piracy.

There was abundant reason for establishing among maritime nations some theory of mutual rights, and for securing the redress of injuries, as far as possible, by means of acknowledged tribunals. In that state of barbarous anarchy which so long resisted the coercive authority of civil magistrates, the sea held out even more temptation and more impunity than the land; and when the laws had regained their sovereignty, and neither robbery nor private warfare was any longer tolerated, there remained that great common of mankind, unclaimed by any king, and the liberty of the sea was another name for the security of plunderers. A pirate, in a well-armed, quick-sailing vessel, must feel, I suppose, the enjoyments of his exemption from control more exquisitely than any other freebooter; and darting along the bosom of the ocean, under the impartial radiance of the heavens, may deride the dark concealments and hurried flights of the forest robber. His occupation is indeed extinguished by the civilization of later ages, or confined to distant climates. But in the thirteenth and fourteenth centuries, a rich vessel was never secure from attack; and neither restitution nor punishment of the criminals was to be obtained from governments who sometimes feared the plunderer and sometimes connived at the offence.* Mere piracy, however, was not the only danger. The maritime towns of Flanders, France, and England, like the free republics of Italy, prosecuted their own quarrels by arms, without asking the leave of their respective sovereigns. This practice, exactly analogous to that of private war in the feudal system, more than once involved the kings of France and England in hostility.† But where the quarrel did not proceed to such a length as absolutely to engage two opposite towns, a modification of this ancient right of revenge formed part of the regular law of nations, under the name of reprisals. Whoever was plundered or injured by the inhabitants of another town obtained authority from his own magistrates to seize the property of any other person belonging to it, until his loss should be compensated. This law of

Law of reprisals.

Barcelona about 900; but his reasonings are inconclusive, t. i., p. 72; and indeed Barcelona at that time was little, if at all, better than a fishing-town. Some arguments might be drawn in favour of Pisa from the expressions of Henry IV.'s charter granted to that city in 1081. Consuetudines, quas habent de mari, sic iis observabimus sicut illorum est consuetudo.—Muratori, Dissert. 45. Giannone seems to think the collection was compiled about the reign of Louis IX., l. xi., c. 6. Capmany, the last Spanish editor, whose authority ought perhaps to outweigh every other, asserts, and seems to prove them to have been enacted by the mercantile magistrates of Barcelona, under the reign of James the Conqueror, which is much the same period.—Codigo de las Costrumbres maritimas de Barcelona, Madrid, 1791.) But, by whatever nation they were reduced into their present form, these laws were certainly the ancient and established usages of the Mediterranean states; and Pisa may very probably have taken a great share in first practising what a century or two afterward was rendered more precise at Barcelona.

* Macpherson, p. 358. Boucher supposes them to be registers of actual decisions.

† I have only the authority of Boucher for referring the Ordinances of Wisbuy to the year 1400. Beckman imagines them to be older than those of Oleron. But Wisbuy was not enclosed by a wall till 1288, a proof that it could not have been previously a town of much importance. It flourished chiefly in the first part of the fourteenth century, and was at that time an independent republic; but fell under the yoke of Denmark before the end of the same age.

* Hugh Despenser seized a Genoese vessel valued at 14,300 marks, for which no restitution was ever made.—Rymer, t. iv., p. 701. Macpherson, A. D. 1336.

† The Cinque Ports and other trading towns of England were in a state of constant hostility with their opposite neighbours during the reigns of Edward I. and II. One might quote almost half the instruments in Rymer in proof of these conflicts, and of those with the mariners of Norway and Denmark. Sometimes mutual envy produced frays between different English towns. Thus, in 1254, the Winchelsea mariners attacked a Yarmouth galley, and killed some of her men.—Matt. Paris apud Macpherson

reprisal was not confined to maritime places. It prevailed in Lombardy, and probably in the German cities. Thus, if a citizen of Modena was robbed by a Bolognese, he complained to the magistrates of the former city, who represented the case to those of Bologna, demanding redress. If this were not immediately granted, letters of reprisals were issued, to plunder the territory of Bologna till the injured party should be reimbursed by sale of the spoil.* In the laws of Marseilles it is declared, "If a foreigner take any thing from a citizen of Marseilles, and he who has jurisdiction over the said debtor or unjust taker does not cause right to be done in the same, the rector or consuls, at the petition of the said citizen, shall grant him reprisals upon all the goods of the said debtor or unjust taker, and also upon the goods of others, who are under the jurisdiction of him who ought to do justice, and would not, to the said citizen of Marseilles."† Edward III. remonstrates, in an instrument published by Rymer, against letters of marque granted by the King of Aragon to one Berenger de la Tone, who had been robbed by an English pirate of £2000; alleging that, inasmuch as he had always been ready to give redress to the party, it seemed to his counsellors that there was no just cause for reprisals upon the king's or his subjects' property.‡ This passage is so far curious, as it asserts the existence of a customary law of nations, the knowledge of which was already a sort of learning. Sir E. Coke speaks of this right of private reprisals as if it still existed;§ and, in fact, there are instances of granting such letters as late as the reign of Charles the First.

Liability of aliens for each other's debts.

A practice founded on the same principles as reprisal, though rather less violent, was that of attaching the goods or persons of resident foreigners for the debts of their countrymen. This indeed, in England, was not confined to foreigners until the statute of Westminster I., c. 23, which enacts that "no stranger who is of this realm shall be distrained in any town or market for a debt wherein he is neither principal nor surety." Henry III. had previously granted a charter to the burgesses of Lubec, that they should not be arrested for the debt of any of their countrymen, unless the magistrates of Lubec neglected to compel payment.* But by a variety of grants from Edward II., the privileges of English subjects under the statute of Westminster were extended to most foreign nations.† This unjust responsibility had not been confined to civil cases. One of a company of Italian merchants, the Spini, having killed a man the officers of justice seized the bodies and effects of all the rest.‡

Great profits of trade,

If, under all these obstacles, whether created by barbarous manners, by national prejudice, or by the fraudulent and arbitrary measures of princes, the merchants of different countries became so opulent as almost to rival the ancient nobility, it must be ascribed to the greatness of their commercial profits. The trading companies possessed either a positive or a virtual monopoly, and held the keys of those eastern regions, for the luxuries of which the progressive refinement of manners produced an increasing demand. It is not easy to determine the average rate of profit;§ but we know that the interest of money was exceedingly high throughout the middle ages. At Verona, in 1228, it was fixed by law at twelve and a half per cent.; at Modena, in 1270, it seems to have been as high as twenty.‖ The republic of Genoa, towards the end of the fourteenth century, when Italy had grown wealthy, paid only from seven to ten per cent to her creditors.¶ But in France and England the rate was far more oppressive. An ordinance of Philip the Fair, in 1311, allows twenty per cent. after the first year of the loan.** Under Henry III., according to Matthew Paris, the debtor paid ten per cent. every two months,†† but this is absolutely incredible

And high rate of interest.

* Muratori, Dissert. 53.

† Du Cange, voc. Laudum.

‡ Rymer, t. iv., p. 576. Videtur sapientibus et peritis, quod causa, de jure, non subfuit marcham seu reprisaliam in nostris, seu subditorum nostrorum, bonis concedendi. See too a case of neutral goods on board an enemy's vessel claimed by the owners, and a legal distinction taken in favour of the captors, t. vi., p. 14.

§ 27 E. III., stat. ii., c. 17. 2 Inst., p. 205.

* Rymer, t. i., p. 839.

† Idem, t. iii., p. 458, 647, 678, et in a. See too the ordinances of the staple, in 27 Edw. III., which confirm this among other privileges, and contain manifold evidence of the regard paid to commerce in that reign.

‡ Rymer, t. ii., p. 891. Madox, Hist. Exchequer, c. xxii., s. 7.

§ In the remarkable speech of the Doge Mocenigo, quoted in another place, p. 177, the annual profit made by Venice on her mercantile capital is reckoned at forty per cent

‖ Muratori, Dissert. 16.

¶ Bizarri Hist. Genuens, p. 797. The rate of discount on bills, which may not have exactly corresponded to the average annual interest of money, was ten per cent. at Barcelona in 1435.—Capmany, t. i., p. 209.

** Du Cange, v. Usura. †† Muratori, Diss. 16

as a general practice. This was not merely owing to scarcity of money, but to the discouragement which a strange prejudice opposed to one of the most useful and legitimate branches of commerce. Usury, or lending money for profit, was treated as a crime by the theologians of the middle ages; and though the superstition has been eradicated, some part of the prejudice remains in our legislation.

Money dealings of the Jews.

This trade in money, and indeed a great part of inland trade in general, had originally fallen to the Jews, who were noted for their usury so early as the sixth century.* For several subsequent ages they continued to employ their capital and industry to the same advantage, with little molestation from the clergy, who always tolerated their avowed and national infidelity, and often with some encouragement from princes. In the twelfth century we find them not only possessed of landed property in Languedoc, and cultivating the studies of medicine and Rabbinical literature in their own academy at Montpelier, under the protection of the Count of Toulouse, but invested with civil offices.† Raymond Roger, viscount of Carcassonne, directs a writ "to his bailiffs Christian and Jewish."‡ It was one of the conditions imposed by the church on the Count of Toulouse, that he should allow no Jews to possess magistracy in his dominions.§ In Spain they were placed by some of the municipal laws on the footing of Christians, with respect to the composition for their lives, and seem in no other European country to have been so numerous or considerable.‖ The diligence and expertness of this people in all pecuniary dealings recommended them to princes who were solicitous about the improvement of their revenue. We find an article in the general charter of privileges granted by Peter III. of Aragon, in 1283, that no Jew should hold the office of a bayle or judge. And two kings of Castile, Alonzo XI. and Peter the Cruel, incurred much odium by employing Jewish ministers in their treasury. But, in other parts of Europe, their condition had, before that time, begun to change for the worse; partly from the fanatical spirit of the crusades, which prompted the populace to massacre, and partly from the jealousy which their opulence excited. Kings, in order to gain money and popularity at once, abolished the debts due to the children of Israel except a part which they retained as the price of their bounty. One is at a loss to conceive the process of reasoning in an ordinance of St. Louis, where, "for the salvation of his own soul and those of his ancestors, he releases to all Christians a third part of what was owing by them to Jews."* Not content with such edicts, the kings of France sometimes banished the whole nation from their dominions, seizing their effects at the same time; and a season of alternative severity and toleration continued till under Charles VI. they were finally expelled from the kingdom, where they never afterward possessed any legal settlement.† In England they were not so harshly treated; but they became less remarkable for riches after the thirteenth century. This decline of the Jews was owing to the transference of their trade in money to other hands. In the early part of the thirteenth century the merchants of Lombardy and of the south of France‡ took up the business of remitting money by bills of exchange,§ and of making profit upon loans. The utility of this was found so great, especially by the Italian clergy, who thus in an easy manner drew the income of their transalpine benefices, that, in spite of much obloquy, the Lombard usurers established themselves in every country; and the general progress of commerce wore off the bigotry that had obstructed their reception. A distinction was made between moderate and exorbitant interest; and though the casuists did not acquiesce

* Greg. Turon., l. iv.

† Hist. de Languedoc, t. ii., p. 517; t. iii., p. 531

‡ Id., t. iii., p. 121. § Id., p. 163

‖ Marina, Ensayo Historico-Critico, p 143

* Martenne, Thesaurus Anecdotorum, t. i., p. 984.

† Velly, t. iv., p, 136.

‡ The city of Cahors, in Quercy, the modern department of the Lot, produced a tribe of money-dealers. The Caursini are almost as often noticed as the Lombards.—See the article in Du Cange. In Lombardy, Asti, a city of no great note in other respects, was famous for the same department of commerce.

§ There were three species of paper credit in the dealings of merchants: 1. General letters of credit, not directed to any one, which are not uncommon in the Levant; 2. Orders to pay money to a particular person; 3. Bills of exchange regularly negotiable.—Boucher, t. ii., p. 621. Instances of the first are mentioned by Macpherson about 1200, p. 367. The second species was introduced by the Jews about 1183 (Capmany, t. i., p. 297), but it may be doubtful whether the last stage of the progress was reached nearly so soon. An instrument in Rymer, however, of the year 1364 (t. vi., p. 495), mentions literæ cambitoriæ, which seem to have been negotiable bills; and by 1400 they were drawn in sets, and worded exactly as at present.—Macpherson, p. 614, and Beckman, History of Inventions, vol. iii., p. 430, give from Capmany an actual precedent of a bill dated in 1404

in this legal regulation yet it satisfied, even in superstitious times, the consciences of provident traders.* The Italian bankers were frequently allowed to farm the customs in England, as a security, perhaps, for loans which were not very punctually repaid.† In 1345, the Bardi at Florence the greatest company in Italy, became bankrupt, Edward III. owing them in principal and interest 900,000 gold florins. Another, the Peruzzi, failed at the same time, being creditors to Edward for 600,000 florins. The King of Sicily owed 100,000 florins to each of these bankers. Their failure involved, of course, a multitude of Florentine citizens, and was a heavy misfortune to the state.‡

Banks of Genoa and others.

The earliest bank of deposite, instituted for the accommodation of private merchants, is said to have been that of Barcelona, in 1401.§ The banks of Venice and Genoa were of a different description. Although the former of these two has the advantage of greater antiquity, having been formed, as we are told, in the twelfth century, yet its early history is not so clear as that of Genoa, nor its political importance so remarkable, however similar might be its origin.‖ During the wars of Genoa in the fourteenth century, she had borrowed large sums of private citizens, to whom the revenues were pledged for repayment. The republic of Florence had set a recent, though not a very encouraging example of a public loan, to defray the expense of her war against Mastino della Scala, in 1336. The chief mercantile firms, as well as individual citizens, furnished money on an assignment of the taxes, receiving fifteen per cent. interest; which appears to have been above the rate of private usury.* The state was not unreasonably considered a worse debtor than some of her citizens; for in a few years these loans were consolidated into a general fund, or *monte*, with some deduction from the capital, and a great diminution of interest; so that an original debt of one hundred florins sold only for twenty-five.† But I have not found that these creditors formed at Florence a corporate body, or took any part, as such, in the affairs of the republic. The case was different at Genoa. As a security at least for their interest, the subscribers to public loans were permitted to receive the produce of the taxes by their own collectors, paying the excess into the treasury. The number and distinct classes of these subscribers becoming at length inconvenient, they were formed about the year 1407 into a single corporation, called the Bank of St. George, which was from that time the sole national creditor and mortgagee. The government of this was intrusted to eight protectors. It soon became almost independent of the state. Every senator, on his admission, swore to maintain the privileges of the bank, which were confirmed by the pope, and even by the emperor. The bank interposed its advice in every measure of government, and generally, as is admitted, to the public advantage. It equipped armaments at its own expense, one of which subdued the Island of Corsica; and this acquisition, like those of our great Indian corporation, was long subject to a company of merchants, without any interference of the mother country.‡

Increase of domestic expenditure.

The increasing wealth of Europe, whether derived from internal improvement or foreign commerce, displayed itself in more expensive consumption, and greater refinements of domestic life. But these effects were for a long time very gradual, each generation making a few steps

* Usury was looked upon with horror by our English divines long after the reformation. Fleury, in his Institutions au Droit Ecclésiastique, t. ii., p. 129, has shown the subterfuges to which men had recourse in order to evade this prohibition. It is an unhappy truth, that great part of the attention devoted to the best of sciences, ethics and jurisprudence, has been employed to weaken principles that ought never to have been acknowledged.

One species of usury, and that of the highest importance to commerce, was always permitted, on account of the risk that attended it. This was marine ensurance, which could not have existed until money was considered in itself as a source of profit. The earliest regulations on the subject of ensurance are those of Barcelona in 1433; but the practice was, of course, earlier than these, though not of great antiquity. It is not mentioned in the Consolato del Mare, nor in any of the Hanseatic laws of the fourteenth century.—Beckman, vol. i., p. 388. This author, not being aware of the Barcelonese laws on this subject published by Capmany, supposes the first provisions regulating marine assurance to have been made at Florence in 1523.

† Macpherson, p. 487, et alibi. They had probably excellent bargains: in 1329 the Bardi farmed all the customs in England for 20*l.* a day. But, in 1282, the customs had produced 8411*l.*, and half a century of great improvement had elapsed.

‡ Villani, l. xii., c. 55, 87. He calls these two banking-houses the pillars which sustained great part of the commerce of Christendom.

§ Capmany, t. i., p. 213.

‖ Macpherson, p. 341, from Sanuto. The bank of Venice is referred to 1171.

* G. Villani, l. xi., c. 49

† Matt. Villani, p. 227 (in Muratori, Script. Rer Ital., t. xiv.).

‡ Bizarri Hist. Genuens., p. 797 (Antwerp. 1579 Machiavelli, Storia Fiorentina, l. vii

in the progress, which are hardly discernible except by an attentive inquirer. It is not till the latter half of the thirteenth century that an accelerated impulse appears to be given to society. The just government and suppression of disorder under St. Louis, and the peaceful temper of his brother Alfonzo, count of Toulouse and Poitou, gave France leisure to avail herself of her admirable fertility. England, that to a soil not perhaps inferior to that of France, united the inestimable advantage of an insular position, and was invigorated, above all, by her free constitution, and the steady industriousness of her people, rose with a pretty uniform motion from the time of Edward I. Italy, though the better days of freedom had passed away in most of her republics, made a rapid transition from simplicity to refinement. "In those times," says a writer about the year 1300, speaking of the age of Frederick II., "the manners of the Italians were rude. A man and his wife ate off the same plate. There was no wooden-handled knives, nor more than one or two drinking-cups in the house. Candles of wax or tallow were unknown: a servant held a torch during supper. The clothes of men were of leather unlined: scarcely any gold or silver was seen on their dress. The common people ate flesh but three times a week, and kept their cold meat for supper. Many did not drink wine in summer. A small stock of corn seemed riches. The portions of women were small; their dress, even after marriage, was simple. The pride of men was to be well provided with arms and horses; that of the nobility to have lofty towers, of which all the cities in Italy were full. But now frugality has been changed for sumptuousness; every thing exquisite is sought after in dress: gold, silver, pearls, silks, and rich furs. Foreign wines and rich meats are required. Hence usury, rapine, fraud, tyranny,"* &c. This passage is supported by other testimonies nearly of the same time. The conquest of Naples by Charles of Anjou, in 1266, seems to have been the epoch of increasing luxury throughout Italy. His Provençal knights with their plumed helmets and golden collars, the chariot of his queen covered with blue velvet and sprinkled with lilies of gold, astonished the citizens of Naples.* Provence had enjoyed a long tranquillity, the natural source of luxurious magnificence; and Italy, now liberated from the yoke of the empire, soon reaped the same fruit of a condition more easy and peaceful than had been her lot for several ages. Dante speaks of the change of manners at Florence, from simplicity and virtue to refinement and dissoluteness, in terms very nearly similar to those quoted above.†

Throughout the fourteenth century, there continued to be a rapid but steady progression in England, of what we may denominate elegance, improvement, or luxury; and if this was for a time suspended in France, it must be ascribed to the unusual calamities which befell that country under Philip of Valois and his son. Just before the breaking out of the English wars, an excessive fondness for dress is said to have distinguished not only the higher ranks, but the burghers, whose foolish emulation at least indicates their easy circumstances.‡ Modes of dress hardly perhaps deserve our notice on their own account; yet, so far as their universal prevalence was a symptom of diffused wealth, we should not overlook either the invectives bestowed by the clergy on the fantastic extravagances of fashion, or the sumptuary laws by which it was endeavoured to restrain them.

The principle of sumptuary laws was partly derived from the small republics of antiquity, which might perhaps require that security for public spirit and equal rights; partly from the austere and injudicious theory

Sumptuary laws.

* Ricobaldus Ferrarensis, apud Murat., Dissert. 23. Francisc. Pippinus, ibidem. Muratori endeavours to extenuate the authority of this passage, on account of some more ancient writers who complain of the luxury of their times, and of some particular instances of magnificence and expense. But Ricobaldi alludes, as Muratori himself admits, to the mode of living in the middle ranks, and not to that of courts, which in all ages might occasionally display considerable splendour. I see nothing to weaken so explicit a testimony of a contemporary, which in fact is confirmed by many writers of the next age, who, according to the practice of Italian chroniclers, have copied it as their own

* Murat., Dissert. 23.

† Bellincion Berti vid' io andar cinto
Di cuojo e d'osso, e venir dallo specchio
La donna sua senza 'l viso dipinto.
E vidi quel di Nerli, e quel del Vecchio
Esser contenti alla pelle scoverta,
E sue donne al fuso ed al pennechio.
Paradis., canto xv.

See too the rest of this canto. But this is put in the mouth of Cacciaguida, the poet's ancestor, who lived in the former half of the twelfth century. The change, however, was probably subsequent to 1250, when the times of wealth and turbulence began at Florence.

‡ Velly, t. viii., p. 352. The second continuator of Nangis vehemently inveighs against the long beards and short breeches of his age; after the introduction of which novelties, he judiciously observes, the French were much more disposed to run away from their enemies than before.—Spicilegium, t. iii., p. 105.

of religion disseminated by the clergy. These prejudices united to render all increase of general comforts odious under the name of luxury; and a third motive, more powerful than either, the jealousy with which the great regard any thing like imitation in those beneath them, co-operated to produce a sort of restrictive code in the laws of Europe. Some of these regulations are more ancient; but the chief part were enacted, both in France and England, during the fourteenth century; extending to expenses of the table as well as apparel. The first statute of this description in our own country was, however, repealed the next year,* and subsequent provisions were entirely disregarded by a nation which valued liberty and commerce too much to obey laws conceived in a spirit hostile to both. Laws indeed designed by those governments to restrain the extravagance of their subjects, may well justify the severe indignation which Adam Smith has poured upon all such interference with private expenditure. The kings of France and England were undoubtedly more egregious spendthrifts than any others in their dominions; and contributed far more by their love of pageantry to excite a taste for dissipation in their people, than by their ordinances to repress it.

Domestic manners of Italy.

Mussus, an historian of Placentia, has left a pretty copious account of the prevailing manners among his countrymen about 1388, and expressly contrasts their more luxurious living with the style of their ancestors seventy years before; when, as we have seen, they had already made considerable steps towards refinement. This passage is highly interesting; because it shows the regular tenour of domestic economy in an Italian city, rather than a mere display of individual magnificence, as in most of the facts collected by our own and the French antiquaries. But it is much too long for insertion in this place.† No other country, perhaps, could exhibit so fair a picture of middle life: in France, the burghers and even the inferior gentry were for the most part in a state of poverty at this period, which they concealed by an affectation of ornament; while our English yeomanry and tradesmen were more anxious to invigorate their bodies by a generous diet, than to dwell in well-furnished houses, or to find comfort in cleanliness and elegance.* The German cities, however, had acquired with liberty the spirit of improvement and industry From the time that Henry V. admitted their artisans to the privileges of free burghers, they became more and more prosperous;† while the steadiness and frugality of the German character compensated for some disadvantages arising out of their inland situation. Spire, Nuremberg, Ratisbon, and Augsburg, were not indeed like the rich markets of London and Bruges, nor could their burghers rival the princely merchants of Italy; but they enjoyed the blessings of competence diffused over a large class of industrious freemen; and in the fifteenth century, one of the politest Italians could extol their splendid and well-furnished dwellings, their rich apparel, their easy and affluent mode of living, the security of their rights, and just equality of their laws.‡

* 37 E. III. Rep. 38 E. III. Several other statutes of a similar nature were passed in this and the ensuing reign. In France there were sumptuary laws as old as Charlemagne, prohibiting or taxing the use of furs; but the first extensive regulation was under Philip the Fair.—Velly, t. vii., p. 64; t. xi., p. 190. These attempts to restrain what cannot be restrained continued even down to 1700.—De la Mare, Traité de la Police, t. i., l. iii.

† Muratori, Antichità Italiane, Dissert. 23, t. i., p. 325.

* These English, said the Spaniards who came over with Philip II., have their houses made of sticks and dirt, but they fare commonly so well as the king.—Harrison's Description of Britain, prefixed to Holingshed, vol. i., p. 315 (edit. 1807).

† Pfeffel, t. i., p. 293.

‡ Æneas Sylvius, de Moribus Germanorum This treatise is an amplified panegyric upon Germany, and contains several curious passages: they must be taken perhaps with some allowance; for the drift of the whole is to persuade the Germans that so rich and noble a country could afford a little money for the poor pope. Civitates quas vocant liberas, cum, Imperatori solùm subjiciuntur, cujus jugum est instar libertatis; nec profectò usquam gentium tanta libertas est, quantâ fruuntur hujuscemodi civitates. Nam populi quos Itali vocant liberos, hi potissimùm serviunt, sive Venetias inspectes, sive Florentiam aut Cænas, in quibus cives, præter paucos qui reliquos ducunt, loco mancipiorum habentur. Cum nec rebus suis uti, ut libet, vel fari quæ velint, et gravissimis opprimuntur pecuniarum exactionibus. Apud Germanos omnia læta sunt, omnia jucunda; nemo suis privatur bonis. Salva cuique sua hæreditas est, nulli nisi nocenti magistratus nocent. Nec apud eos factiones sicut apud Italas urbes grassantur. Sunt autem supra centum civitates hâc libertate fruentes, p. 1058.

In another part of his work p. 719, he gives a specious account of Vienna. The houses, he says, had glass windows and iron doors. Fenestræ undique vitreæ perlucent, et ostia plerumque ferrea. In domibus multa et munda supellex. Altæ domus magnificæque visuntur. Unum id dedecori est, quod tecta plerumque tigno contegunt, pauca latere. Cætera ædificia muro lapideo consistunt. Pictæ domus et exterius et interius splendent. Civitatis populus 50 000 *communicantium* creditur. I suppose this gives at least double for the total population. He proceeds to represent the manners of

No chapter in the history of national manners would illustrate so well, if duly executed, the progress of social life, as that dedicated to domestic architecture. The fashions of dress and of amusements are generally capricious and irreducible to rule; but every change in the dwellings of mankind, from the rudest wooden cabin to the stately mansion, has been dictated by some principle of convenience, neatness, comfort, or magnificence. Yet this most interesting field of research has been less beaten by our antiquaries than others comparatively barren. I do not pretend to a complete knowledge of what has been written by these learned inquirers; but I can only name one book in which the civil architecture of our ancestors had been sketched, loosely indeed, but with a superior hand; and another in which it is partially noticed. I mean by the first, a chapter in the Appendix to Dr. Whitaker's History of Whalley; and by the second, Mr. King's Essays on ancient Castles in the Archæologia.* Of these I shall make free use in the following paragraphs.

Civil architecture.

The most ancient buildings which we can trace in this island, after the departure of the Romans, were circular towers of no great size, whereof many remain in Scotland; erected either on a natural eminence, or on an artificial mound of earth. Such are Conisborough Castle in Yorkshire, and Castleton in Derbyshire, built perhaps before the conquest.† To the lower chambers of those gloomy keeps there was no admission of light or air, except through long narrow loopholes and an aperture in the roof. Regular windows were made in the upper apartments. Were it not for the vast thickness of the walls, and some mark of attention both to convenience and decoration in these structures, we might be induced to consider them as rather intended for security during the transient inroad of an enemy, than for a chieftain's usual residence. They bear a close resemblance, except by their circular form and more insulated situation, to the peels, or square towers of three or four stories, which are still found contiguous to ancient mansion-houses, themselves far more ancient, in the northern counties,* and seem to have been designed for places of refuge.

In course of time, the barons who owned these castles began to covet a more comfortable dwelling. The keep was either much enlarged, or altogether relinquished as a place of residence, except in time of siege; while more convenient apartments were sometimes erected in the tower of entrance, over the great gateway, which led to the inner ballium or courtyard. Thus at Tunbridge Castle, this part of which is referred by Mr. King to the beginning of the thirteenth century, there was a room twenty-eight feet by sixteen on each side of the gateway; another above, of the same dimensions, with an intermediate room over the entrance; and one large apartment on a second floor occupying the whole space, and intended for state. The windows in this class of castles were still little better than loopholes on the basement story, but in the upper rooms often large and beautifully ornamented, though always looking inwards to the court. Edward I. introduced a more splendid and convenient style of castles, containing many habitable towers, with communicating apartments. Conway and Carnarvon will be familiar examples. The next innovation was the castle-palace; of which Windsor, if not quite the earliest, is the most magnificent instance. Alnwick, Naworth, Harewood, Spofforth, Kenilworth, and Warwick, were all built upon this scheme during the fourteenth century, but subsequent enlargements have rendered caution necessary to distinguish their original remains. "The odd mixture," says Mr King, "of convenience and magnificence with cautious designs for protection and defence, and with the inconveniences of the former confined plan of a close fortress, is very striking." The provisions for defence became now, however, little

the city in a less favourable point of view, charging the citizens with gluttony and libertinism, the nobility with oppression, the judges with corruption, &c. Vienna probably had the vices of a flourishing city; but the love of amplification in so rhetorical a writer as Æneas Sylvius weakens the value of his testimony, on whichever side it is given.

* Vols. iv. and vi.

† Mr. Lysons refers Castleton to the age of William the Conqueror, but without giving any reasons. —Lysons's Derbyshire, p. ccxxxvi. Mr. King had satisfied himself that it was built during the Heptarchy, and even before the conversion of the Saxons to Christianity; but in this he gave the reins, as usual, to his imagination, which as much exceeded his learning as the latter did his judgment. Conisborough should seem, by the name, to have been a royal residence, which it certainly never was after the conquest. But if the engravings of the decorative parts in Archæologia, vol. vi., p. 244, are not remarkably inaccurate, the architecture is too elegant for the Danes, much more for the unconverted Saxons. Both these castles are enclosed by a court or ballium, with a fortified entrance, like those erected by the Normans.

* Whitaker's Hist. of Whalley. Lysons's Cumberland p. ccvi.

more than nugatory; large arched windows, like those of cathedrals, were introduced into halls, and this change in architecture manifestly bears witness to the cessation of baronial wars, and the increasing love of splendour in the reign of Edward III.

To these succeeded the castellated houses of the fifteenth century; such as Herstmonceux in Sussex, Haddon Hall in Derbyshire, and the older part of Knowle in Kent.* They resembled fortified castles in their strong gateways, their turrets and battlements, to erect which a royal license was necessary, but their defensive strength could only have availed against a sudden affray or attempt at forcible dispossession. They were always built round one or two courtyards, the circumference of the first, when there were two, being occupied by the offices and servants' rooms, that of the second by the state-apartments. Regular quadrangular houses, not castellated, were sometimes built during the same age, and under Henry VII. became universal in the superior style of domestic architecture.† The quadrangular form, as well from security and convenience as from imitation of conventual houses, which were always constructed upon that model, was generally preferred; even where the dwelling-house, as indeed was usual, only took up one side of the enclosure, and the remaining three contained the offices, stables, and farm-buildings, with walls of communication. Several very old parsonages appear to have been built in this manner.‡ It is, however, very difficult to discover any fragments of houses inhabited by the gentry before the reign, at soonest, of Edward III., or even to trace them by engravings in the older topographical works; not only from the dilapidations of time, but because very few considerable mansions had been erected by that class. A great part of England affords no stone fit for building; and the vast, though unfortunately not inexhaustible resources of her oak forests, were easily applied to less durable and magnificent structures. A frame of massive timber, independent of walls, and resembling the inverted hull of a large ship, formed the skeleton, as it were, of an ancient hall; the principal beams springing from the ground naturally curved, and forming a Gothic arch overhead. The intervals of these were filled up with horizontal planks; but in the earlier buildings, at least in some districts, no part of the walls was of stone.* Stone houses are however mentioned as belonging to citizens of London, even in the reign of Henry II.;† and, though not often perhaps regularly hewn stones, yet those scattered over the soil, or dug from flint quarries, bound together with a very strong and durable cement, were employed in the construction of manorial houses, especially in the western counties, and other parts where that material is easily procured.‡ Gradually, even in timber buildings, the intervals of the main beams, which now became perpendicular, not throwing off their curved springers till they reached a considerable height, were occupied by stone walls, or where stone was expensive, by mortar or plaster, intersected by horizontal or diagonal beams, grooved into the principal piers.§ This mode of building continued for a long time, and is still familiar to our eyes in the older streets of the metropolis and other towns, and in many parts of the country.‖ Early in the fourteenth century, the art of building with brick, which had been lost since the Roman dominion, was introduced, probably from Flanders. Though several edifices of that age are constructed with this material, it did not come into general use till the reign of Henry VI.¶ Many considerable houses as well as public buildings were erected with bricks during his reign and that of Edward IV., chiefly in the eastern counties, where the deficiency of stone was most experienced. Few, if any, brick mansion-houses of the fifteenth century exist, except in a dilapidated state; but Queen's College and Clare Hall at Cambridge, and part of Eton College, are subsisting witnesses to the durability of the material as it was then employed.

Meanness of ordinary mansion-houses

It is an error to suppose that the English gentry were lodged in stately or even in

* The ruins of Herstmonceux are, I believe, tolerably authentic remains of Henry VI.'s age, but a modern antiquary asserts that only one of the courts at Haddon Hall is of the fifteenth century.—Lysons's Derbyshire.

† Archæologia, vol. vi.

‡ Blomefield's Norfolk, vol. iii. p. 242.

* Whitaker's Hist. of Whalley.

† Lyttleton, t. iv., p. 130.

‡ Harrison says that few of the houses of the commonalty, except here and there in the west country towns, were made of stone, p. 314. This was about 1570. § Hist. of Whalley.

‖ The ancient manours and houses of our gentlemen, says Harrison, are yet, and for the most part, of strong timber, in framing whereof our carpenters have been and are worthily preferred before those of like science among all other nations. Howbeit such as are lately builded are either of brick or hard stone, or both, p. 316.

¶ Archæologia, vol. i., p. 143; vol. iv., p. 91.

well-sized houses. Generally speaking, their dwellings were almost as inferior to those of their descendants in capacity as they were in convenience. The usual arrangement consisted of an entrance-passage running through the house, with a hall on one side, a parlour beyond, and one or two chambers above, and on the opposite side a kitchen, pantry, and other offices.* Such was the ordinary manor-house of the fifteenth and sixteenth centuries, as appears not only from the documents and engravings, but, as to the latter period, from the buildings themselves, sometimes, though not very frequently, occupied by families of consideration, more often converted into farmhouses or distinct tenements. Larger structures were erected by men of great estates during the reigns of Henry VI. and Edward IV.; but very few can be traced higher; and such has been the effect of time, still more through the advance or decline of families, and the progress of architectural improvement, than the natural decay of these buildings, that I should conceive it difficult to name a house in England, still inhabited by a gentleman, and not belonging to the order of castles, the principal apartments of which are older than the reign of Henry VII. The instances at least must be extremely few.†

France by no means appears to have made a greater progress than our own country in domestic architecture. Except fortified castles, I do not find in the work of a very miscellaneous, but apparently diligent writer,* any considerable dwellings mentioned before the reign of Charles VII., and very few of so early a date.† Jacques Cœur, a famous merchant, unjustly persecuted by that prince, had a handsome house at Paris, as well as another at Beaumont-sur-Oise.‡ It is obvious that the long calamities which France endured before the expulsion of the English must have retarded this eminent branch of national improvement.

Even in Italy, where, from the size of her cities and social refinements of her inhabitants, greater elegance and splendour in building were justly to be expected, the domestic architecture of the middle ages did not attain any perfection. In several towns the houses were covered with thatch, and suffered consequently from destructive fires. Costanzo, a Neapolitan historian near the end of the sixteenth century, remarks the change of manners that had occurred since the reign of Joanna II., one hundred and fifty years before. The great families under the queen expended all their wealth on their retainers, and placed their chief pride in bringing them into the field. They were ill lodged, not sumptuously clothed, nor luxurious in their tables. The house of Caracciola, high steward of that princess, one of the most powerful subjects that ever existed, having fallen into the hands of persons incomparably below his station, had been enlarged by them, as insufficient for their accommodation.◊ If such were the case in the city of Naples so late as the beginning of the fifteenth century, we may

* Hist. of Whalley. In Strutt's View of Manners we have an inventory of furniture in the house of Mr. Richard Fermor, ancestor of the Earl of Pomfret, at Easton, in Northamptonshire, and another in that of Sir Adrian Foskewe. Both these houses appear to have been of the dimensions and arrangement mentioned. And even in houses of a more ample extent, the bisection of the ground-plot by an entrance-passage was, I believe, universal, and is a proof of antiquity. Haddon Hall and Penshurst still display this ancient arrangement, which has been altered in some old houses. About the reign of James I., or perhaps a little sooner, architects began to perceive the additional grandeur of entering the great hall at once.

† Single rooms, windows, doorways, &c., of an earlier date may perhaps not unfrequently be found; but such instances are always to be verified by their intrinsic evidence, not by the tradition of the place. The most remarkable fragment of early building which I have anywhere found mentioned is at a house in Berkshire, called Appleton, where there exists a sort of prodigy, an entrance-passage with circular arches in the Saxon style, which must probably be as old as the reign of Henry II. No other private house in England, as I conceive, can boast of such a monument of antiquity.—Lysons's Berkshire p. 212 234.

* Mélanges tirés d'une grande bibliothèque, par M. de Paulmy, t. iii., et xxxi. It is to be regretted that Le Grand d'Aussy never completed that part of his Vie privée des Français which was to have comprehended the history of civil architecture. Villaret has slightly noticed its state about 1380, t. ii., p. 141.

† Chenonceaux in Touraine was built by a nephew of Chancellor Duprat; Gaillon in the department of Eure by Cardinal Amboise; both at the beginning of the sixteenth century. These are now considered, in their ruins, as among the most ancient houses in France. A work by Ducerceau (Les plus excellens Bâtimens de France 1607) gives accurate engravings of thirty houses; but, with one or two exceptions, they seem all to have been built in the sixteenth century. Even in that age, defence was naturally an object in constructing a French mansion-house; and where defence is to be regarded, splendour and convenience must give way. The name of *chateau* was not retained without meaning.

‡ Mélanges tirés, &c., t. iii. For the prosperity and downfall of Jacques Cœur, see Villaret, t. xvi. p. 11; but more especially Mém. de l'Acad. des Inscript., t. xx., p. 509.

◊ Giannone, Ist. di Napoli, t. iii., p. 280

guess how mean were the habitations in less polished parts of Europe.

Invention of chimneys and glass windows.

The two most essential improvements in architecture during this period, one of which had been missed by the sagacity of Greece and Rome, were chimneys and glass windows. Nothing apparently can be more simple than the former; yet the wisdom of ancient times had been content to let the smoke escape by an aperture in the centre of the roof; and a discovery, of which Vitruvius had not a glimpse, was made perhaps in this country, by some forgotten semi-barbarian. About the middle of the fourteenth century the use of chimneys is distinctly mentioned in England and in Italy; but they are found in several of our castles which bear a much older date.* This country seems to have lost very early the art of making glass, which was preserved in France, whence artificers were brought into England to furnish the windows in some new churches during the seventh century.† It is said that in the reign of Henry III., a few ecclesiastical buildings had glazed windows.‡ Suger, however, a century before, had adorned his great work, the abbey of St. Denis, with windows, not only glazed, but painted;§ and I presume that other churches of the same class, both in France and England, especially after the lancet-shaped window had yielded to one of ampler dimensions, were generally decorated in a similar manner. Yet glass is said not to have been employed in the domestic architecture of France before the fourteenth century;* and its introduction into England was probably by no means earlier. Nor indeed did it come into general use during the period of the middle ages. Glazed windows were considered as moveable furniture, and probably bore a high price. When the earls of Northumberland, as late as the reign of Elizabeth, left Alnwick Castle, the windows were taken out of their frames and carefully laid by.†

Furniture of houses

But if the domestic buildings of the fifteenth century would not seem very spacious or convenient at present, far less would this luxurious generation be content with their internal accommodations. A gentleman's house containing three or four beds was extraordinarily well provided; few probably had more than two. The walls were commonly bare, without wainscot or ever plaster; except that some great houses were furnished with hangings, and that perhaps hardly so soon as the reign of Edward IV. It is unnecessary to add, that neither libraries of books nor pictures could have found a place among furniture. Silver plate was very rare, and hardly used for the table. A few inventories of furniture that still remain exhibit a miserable deficiency.‡ And this was incomparably greater in private gentlemen's houses than among citizens, and especially foreign merchants. We have an inventory of the goods belonging to Contarini, a rich Venetian trader, at his house in St. Botolph's Lane, A. D. 1481. There appear to have been no less than ten beds, and glass windows are especially noticed as moveable furniture. No mention however is made of chairs or looking-glasses.§ If we compare this

* Muratori, Antich. Ital., Dissert. 25, p. 390. Beckman, in his History of Inventions, vol. i., a work of very great research, cannot trace any explicit mention of chimneys beyond the writings of John Villani, wherein however they are not noticed as a new invention. Piers Plowman, a few years later than Villani, speaks of a "chambre with a chimney" in which rich men usually dined. But in the account-book of Bolton Abbey, under the year 1311, there is a charge pro faciendo camino in the rectory-house of Gargrave.—Whitaker's Hist. of Craven, p. 331. This may, I think, have been only an iron stove or firepan; though Dr. W., without hesitation, translates it a chimney. However, Mr. King, in his observations on ancient castles, Archæol., vol. vi., and Mr. Strutt, in his View of Manners, vol. i., describes chimneys in castles of a very old construction. That at Conisborough in Yorkshire is peculiarly worthy of attention, and carries back this important invention to a remote antiquity. Chimneys are still more modern in France; and seem, according to Paulmy, to have come into common use since the middle of the seventeenth century. Jadis nos pères n'avoient qu'un unique chauffoir, qui etoit commun à toute une famille, et quelquefois à plusieurs, t. iii., p. 133. In another place, however, he says; Il paraît que les tuyaux de cheminées étaient déjà très en usage en France. t. xxx., p. 232.

† Du Cange, v. Vitreæ. Bentham's History of Ely, p. 22.

‡ Matt. Paris. Vitæ Abbatum St. Alb. 122.

§ Recueil des Hist., t. xii., p. 101.

* Paulmy, t. iii., p. 132. Villaret, t. xi., p. 141 Macpherson, p. 679.

† Northumberland Household Book, preface, p. 16. Bishop Percy says, on the authority of Harrison, that glass was not commonly used in the reign of Henry VIII.

‡ See some curious valuations of furniture and stock in trade at Colchester in 1296 and 1301. Eden's Introduct. to State of the Poor, p. 20 and 25, from the rolls of parliament. A carpenter's stock was valued at a shilling, and consisted of five tools. Other tradesmen were almost as poor; but a tanner's stock, if there is no mistake, was worth 9*l.* 7*s.* 10*d.*, more than ten times any other. Tanners were principal tradesmen, the chief part of dress being made of leather. A few silver cups and spoons are the only articles of plate; and as the former are valued but at one or two shillings, they had, I suppose, but a little silver on the rim.

§ Nicholl's Illustrations, p. 119. In this work

account, however trifling in our estimation, with a similar inventory of furniture in Skipton Castle, the great honour of the earls of Cumberland, and among the most splendid mansions of the north, not at the same period, for I have not found any inventory of a nobleman's furniture so ancient, but in 1572, after almost a century of continual improvement, we shall be astonished at the inferior provision of the baronial residence. There were not more than seven or eight beds in this great castle; nor had any of the chambers either chairs, glasses, or carpets.* It is in this sense, probably, that we must understand Æneas Sylvius, if he meant any thing more than to express a traveller's discontent, when he declares that the kings of Scotland would rejoice to be as well lodged as the second class of citizens at Nuremberg.† Few burghers of that town had mansions, I presume, equal to the palaces of Dumferlin or Stirling, but it is not unlikely that they were better furnished.

In the construction of farmhouses and cottages, especially the latter, there have probably been fewer changes; and those it would be more difficult to follow. No building of this class can be supposed to exist of the antiquity to which the present work is confined: and I do not know that we have any document as to the inferior architecture of England, so valuable as one which M. de Paulmy has quoted for that of France, though perhaps more strictly applicable to Italy, an illuminated manuscript of the fourteenth century, being a translation of Crescentio's work on agriculture, illustrating the customs, and, among other things, the habitations of the agricultural class. According to Paulmy, there is no other difference between an ancient and a modern farmhouse, than arises from the introduction of tiled roofs.* In the original work of Crescentio, a native of Bologna, who composed this treatise on rural affairs about the year 1300, an Italian farmhouse, when built at least according to his plan, appears to have been commodious both in size and arrangement.† Cottages in England seem to have generally consisted of a single room, without division of stories. Chimneys were unknown in such dwellings till the early part of Elizabeth's reign, when a very rapid and sensible improvement took place in the comforts of our yeomanry and cottagers.‡

Farmhouses and cottages.

It must be remembered, that I have introduced this disadvantageous representation of civil architecture as a proof of general poverty and backwardness in the refinements of life. Considered in its higher departments, that art is the principal boast of the middle ages. The common buildings, especially those of a public kind, were constructed with skill and attention to durability. The castellated style displays these qualities in greater perfection; the means are well adapted to their objects, and its imposing grandeur, though chiefly resulting no doubt from massiveness and historical association, sometimes indicates a degree of

Ecclesiastical architecture.

among several interesting facts of the same class, we have another inventory of the goods of "John Port, late the king's servant," who died about 1524; he seems to have been a man of some consideration, and probably a merchant. The house consisted of a hall, parlour, buttery, and kitchen, with two chambers, and one smaller, on the floor above; a napery, or linen room, and three garrets, besides a shop, which was probably detached. There were five bedsteads in the house, and on the whole a great deal of furniture for those times; much more than I have seen in any other inventory. His plate is valued at 94*l.*; his jewels at 23*l.*; his funeral expenses come to 73*l.* 6*s.* 8*d.*, p. 119.

* Whitaker's Hist. of Craven, p. 289. A better notion of the accommodations usual in the rank immediately below may be collected from two inventories published by Strutt, one of Mr. Fermor's house at Easton, the other Sir Adrian Foskewe's.—I have mentioned the size of these gentlemen's houses already. In the former, the parlour had wainscot, a table, and a few chairs; the chambers above had two best beds, and there was one servant's bed; but the inferior servants had only mattresses on the floor. The best chambers had window-shutters and curtains Mr. Fermor, being a merchant, was probably better supplied than the neighbouring gentry. His plate, however, consisted only of sixteen spoons, and a few goblets and ale pots. Sir Adrian Foskewe's opulence appears to have been greater; he had a service of silver plate, and his parlour was furnished with hangings. This was in 1539; it is not to be imagined that a knight of the shire a hundred years before would have rivalled even this scanty provision of moveables.—Strutt's View of Manners, vol. iii., p. 63. These details, trifling as they may appear, are absolutely necessary in order to give an idea with some precision of a state of national wealth so totally different from the present.

† Cuperent tam egregiè Scotorum reges quàm mediocres Nurembergæ cives habitare.—Æn. Sylv. apud Schmidt Hist. des Allem., t. v., p. 510.

* Æn. Sylv. apud Schmidt, Hist. des Allem., t iii., p. 127.

† Crescentius in Commodum Ruralium. (Lovaniæ, absque anno.) This old edition contains many coarse wooden cuts, possibly taken from the illuminations which Paulmy found in his manuscript.

‡ Harrison's account of England, prefixed to Hollingshed's Chronicles. Chimneys were not used in the farmhouses of Cheshire till within forty years of the publication of King's Vale-royal (1656); the fire was in the midst of the house against a hob of clay, and the oxen lived under the same roof.—Whitaker's Craven, p 334

architectural genius in the conception. But the most remarkable works of this art are the religious edifices erected in the twelfth and three following centuries. These structures, uniting sublimity in general composition with the beauties of variety and form, intricacy of parts, skilful or at least fortunate effects of shadow and light, and in some instances with extraordinary mechanical science, are naturally apt to lead those antiquaries who are most conversant with them into too partial estimates of the times wherein they were founded. They certainly are accustomed to behold the fairest side of the picture. It was the favourite and most honourable employment of ecclesiastical wealth, to erect, to enlarge, to repair, to decorate cathedral and conventual churches. An immense capital must have been expended upon these buildings in England between the conquest and the reformation. And it is pleasing to observe how the seeds of genius, hidden as it were under the frost of that dreary winter, began to bud to the first sunshine of encouragement. In the darkest period of the middle ages, especially after the Scandinavian incursions into France and England, ecclesiastical architecture, though always far more advanced than any other art, bespoke the rudeness and poverty of the times It began towards the latter part of the eleventh century, when tranquillity, at least as to former enemies, was restored, and some degree of learning reappeared, to assume a more noble appearance. The Anglo-Norman cathedrals were perhaps as much distinguished above other works of man in their own age, as the more splendid edifices of a later period. The science manifested in them is not however very great; and their style, though by no means destitute of lesser beauties, is upon the whole an awkward imitation of Roman architecture, or perhaps more immediately of the Saracenic buildings in Spain, and those of the lower Greek empire.* But about the middle of the twelfth century, this manner began to give place to what is improperly denominated the Gothic architecture;* of which the pointed arch, formed by the segments of two intersecting semicircles, struck from points equidistant from the centre of a common diameter, has been deemed the essential characteristic. We are not concerned at present to inquire whether this style originated in France or Germany, Italy or England, since it was certainly almost simultaneous in all these countries;† nor

* The Saracenic architecture was once conceived to have been the parent of the Gothic. But the pointed arch does not occur, I believe, in any Moorish buildings; while the great mosque of Cordova, built in the eighth century, resembles, except by its superior beauty and magnificence, one of our oldest cathedrals; the nave of Glocester for example, or Durham. Even the vaulting is similar, and seems to indicate some imitation, though perhaps of a common model. Compare Archæologia, vol. xvii., plate 1 and 2, with Murphy's Arabian Antiquities, plate 5. The pillars indeed at Cordova are of the Corinthian order, perfectly executed, if we may trust the engraving, and the work I presume, of Christian architects; while those of our Anglo-Norman cathedrals are generally an imitation of the Tuscan shaft, the builders not venturing to trust their roofs to a more slender support, though Corinthian foliage is common in the capitals, especially those of smaller ornamental columns. In fact, the Roman architecture is universally acknowledged to have produced what we call the Saxon or Norman; but it is remarkable that it should have been adopted, with no variation but that of the singular horseshoe arch, by the Moors of Spain.

The Gothic, or pointed arch, though very uncommon in the genuine Saracenic of Spain and the Levant, may be found in some prints from eastern buildings; and is particularly striking in the façade of the great mosque at Lucknow, in Salt's designs for Lord Valentia's Travels. The pointed arch buildings in the Holy Land have all been traced to the age of the crusades. Some arches, if they deserve the name, that have been referred to this class, are not pointed by their construction, but rendered such by cutting off and hollowing the projections of horizontal stones.

* Gibbon has asserted, what might justify this appellation, that "the image of Theodoric's palace at Verona, still extant on a coin, represents the oldest and most authentic model of Gothic architecture," vol. vii., p. 33. For this he refers to Maffei, Verona Illustrata, p. 31, where we find an engraving, not indeed of a coin, but of a seal; the building represented on which is in a totally dissimilar style. The following passages in Cassiodorus, for which I am indebted to M. Ginguené, Hist. Littér. de l'Italie, t. i., p. 55, would be more to the purpose; Quid dicamus columnarum junceam proceritatem? moles illas sublimissimas fabricarum quas si quibusdam erectis hastilibus contineri. These columns of reedy slenderness, so well described by juncea proceritas, are said to be found in the cathedral of Montreale in Sicily, built in the eighth century.—Knight's Principles of Taste, p. 162. They are not however sufficient to justify the denomination of Gothic, which is usually confined to the pointed arch style.

† The famous abbot Suger, minister of Louis VI., rebuilt St. Denis about 1140. The cathedral of Laon is said to have been dedicated in 1114.—Hist. Littéraire de la France, t. ix., p. 220. I do not know in what style the latter of these churches is built, but the former is, or rather was, Gothic. Notre Dame at Paris was begun soon after the middle of the twelfth century, and completed under St. Louis. Mélanges tirés d'une grande bibliothèque, t. xxxi., p. 108. In England the earliest specimen I have seen of pointed arches is in a print of St. Botolph's priory at Colchester, said by Strutt to have been built in 1110.—View of Manners, vol i., plate 30. These are apertures formed by excavating the space contained by the intersection of semicircular or Saxon arches, which are perpet

from what source it was derived; a question of no small difficulty. I would only venture to remark, that whatever may be thought of the origin of the pointed arch, for which there is more than one mode of accounting, we must perceive a very oriental character in the vast profusion of ornament, especially on the exterior surface, which is as distinguishing a mark of Gothic buildings as their arches, and contributes in an eminent degree both to their beauties and to their defects. This indeed is rather applicable to the later than the earlier stage of architecture, and rather to continental than English churches. Amiens is in a far more florid style than Salisbury, though a contemporary structure. The Gothic species of architecture is thought by some to have reached its perfection, considered as an object of taste, by the middle of the fourteenth century, or at least to have lost something of its excellence by the corresponding part of the next age; an effect of its early and rapid cultivation, since arts appear to have, like individuals, their natural progress and decay. Yet this seems, if true at all, only applicable to England; since the cathedrals of Cologne and Milan, perhaps the most distinguished monuments of this architecture, are both of the fifteenth century. The mechanical execution, at least, continued to improve, and is so far beyond the apparent intellectual powers of those times, that some have ascribed the principal ecclesiastical structures to the fraternity of freemasons, depositaries of a concealed and traditionary science. There is probably some ground for this opinion; and the earlier archives of that mysterious association, if they existed, might illustrate the progress of Gothic architecture, and perhaps reveal its origin. The remarkable change into this new style, that was almost contemporaneous in every part of Europe,* cannot be explained by any local circumstances, or the capricious taste of a single nation.

It would be a pleasing task to trace with satisfactory exactness the slow, and almost perhaps insensible progress of agriculture and internal improvement during the latter period of the middle ages. But no diligence could recover the unrecorded history of a single village; though considerable attention has of late been paid to this interesting subject by those antiquaries who, though sometimes affecting to despise the lights of modern philosophy, are unconsciously guided by their effulgence. I have already adverted to the wretched condition of agriculture during the prevalence of feudal tenures, as well as before their general establishment.* Yet, even in the least civilized ages, there were not wanting partial encouragements

Agriculture in some degree progressive.

ually disposed, by way of ornament, on the outer as well as inner surface of old churches, so as to cut each other, and consequently to produce the figure of a Gothic arch; and if there is no mistake in the date, they are probably among the most ancient of that style in Europe. Those at the church of St. Cross near Winchester are of the reign of Stephen; and, generally speaking, the pointed style, especially in vaulting, the most important object in the construction of a building, is not considered as older than Henry II. The nave of Canterbury cathedral, of the erection of which by a French architect about 1176 we have a full account in Gervase (Twysden, Decem Scriptores, col. 1289), and the Temple church, dedicated in 1183, are the most ancient English buildings altogether in the Gothic manner.

* The curious subject of freemasonry has unfortunately been treated only by panegyrists or calumniators, both equally mendacious. I do not wish to pry into the mysteries of the craft; but it would be interesting to know more of their history during the period when they were literally architects. They are charged by an act of parliament, 3 H. VI., c. 1, with fixing the price of their labour in their annual chapters, contrary to the statute of labourers, and such chapters are consequently prohibited. This is their first persecution; they have since undergone others, and are perhaps reserved for still more. It is remarkable that masons were never legally incorporated, like other traders; their bond of union being stronger than any charter. The article Masonry, in the Encyclopædia Britannica, is worth reading.

* I cannot resist the pleasure of transcribing a lively and eloquent passage from Dr. Whitaker. "Could a curious observer of the present day carry himself nine or ten centuries back, and ranging the summit of Pendle, survey the forked vale of Calder on one side, and the bolder margins of Ribble and Hadder on the other, instead of populous towns and villages, the castle, the old tower-built house, the elegant modern mansion, the artificial plantation, the enclosed park and pleasure-ground: instead of uninterrupted enclosures, which have driven sterility almost to the summit of the fells, how great must then have been the contrast, when ranging either at a distance or immediately beneath, his eye must have caught vast tracts of forest-ground, stagnating with bog or darkened by native woods, where the wild ox, the roe, the stag, and the wolf, had scarcely learned the supremacy of man, when, directing his view to the intermediate spaces, to the windings of the valleys, or the expanse of plains beneath, he could only have distinguished a few insulated patches of culture, each encircling a village of wretched cabins, among which would still be remarked one rude mansion of wood, scarcely equal in comfort to a modern cottage, yet then rising proudly eminent above the rest, where the Saxon lord, surrounded by his faithful cotarii, enjoyed a rude and solitary independence, owning no superior but his sovereign."—Hist. of Whalley, p. 133. About a fourteenth part of this parish of Whalley was cultivated at the time of Domesday. This proportion, however, would by no means hold in the counties south of Trent.

to cultivation, and the ameliorating principle of human industry struggled against destructive revolutions and barbarous disorder. The devastation of war from the fifth to the eleventh century rendered land the least costly of all gifts, though it must ever be the most truly valuable and permanent. Many of the grants to monasteries, which strike us as enormous, were of districts absolutely wasted, which would probably have been reclaimed by no other means. We owe the agricultural restoration of great part of Europe to the monks. They chose, for the sake of retirement, secluded regions, which they cultivated with the labour of their hands.* Several charters are extant, granted to convents, and sometimes to laymen, of lands which they had recovered from a desert condition, after the ravages of the Saracens.† Some districts were allotted to a body of Spanish colonists, who emigrated, in the reign of Louis the Debonair, in search of a Christian sovereign.‡ Nor is this the only instance of agricultural colonies. Charlemagne transplanted part of his conquered Saxons into Flanders, a country at that time almost unpeopled; and, at a much later period, there was a remarkable reflux from the same country, or rather from Holland, to the coasts of the Baltic Sea. In the twelfth century, great numbers of Dutch colonists settled along the whole line between the Ems and the Vistula. They obtained grants of uncultivated land on condition of fixed rents, and were governed by their own laws under magistrates of their own election.§

There cannot be a more striking proof of the low condition of English agriculture in the eleventh century, than is exhibited by Domesday book. Though almost all England had been partially cultivated, and we find nearly the same manors, except in the north, which exist at present, yet the value and extent of cultivated ground are inconceivably small. With every allowance for the inaccuracies and partialities of those by whom that famous survey was completed,* we are lost in amazement at the constant recurrence of two or three carucates in demesne, with folklands occupied by ten or a dozen villeins, valued altogether at forty shillings, as the return of a manor, which now would yield a competent income to a gentleman. If Domesday book can be considered as even approaching to accuracy in respect of these estimates, agriculture must certainly have made a very material progress in the four succeeding centuries. This, however, is rendered probable by other documents. Ingulfus, abbot of Croyland under the Conqueror, supplies an early and interesting evidence of improvement. Richard de Rules, lord of Deeping, he tells us, being fond of agriculture, obtained permission from the abbey to enclose a large portion of marsh for the purpose of separate pasture, excluding the Welland by a strong dike upon which he erected a town, and rendering those stagnant fens a garden of Eden.† In imitation of this spirited cultivator, the inhabitants of Spalding and some neighbouring villages, by a common resolution, divided their marshes among them; when some converting them to tillage, some reserving them for meadow, others leaving them in pasture found a rich soil for every purpose. The

* "Of the Anglo-Saxon husbandry we may remark," says Mr. Turner, "that Domesday Survey gives us some indication that the cultivation of the church lands was much superior to that of any other order of society. They have much less wood upon them, and less common of pasture; and what they had appears often in smaller and more irregular pieces; while their meadow was more abundant, and in more numerous distributions."—Hist. of Anglo-Saxons, vol. ii., p. 167.

† Thus, in Marca Hispanica, Appendix, p. 770, we have a grant from Lothaire I. in 834, to a person and his brother, of lands which their father, ab eremo in Septimaniâ trahens, had possessed by a charter of Charlemagne. See too p. 773, and other places. Du Cange, v. Eremus, gives also a few instances.

‡ Du Cange, v. Aprisio. Baluze, Capitularia, t. ., p. 549. They were permitted to decide petty suits among themselves, but for more important matters were to repair to the county-court. A liberal policy runs through the whole charter. See more on the same subject, id., p. 569.

§ I owe this fact to M. Heeren, Essai sur l'Influence des Croisades, p. 226. An inundation in their own country is supposed to have immediately produced this emigration; but it was probably successive, and connected with political as well as physical causes of greater permanence. The first instrument in which they are mentioned is a grant from the Bishop of Hamburgh in 1106. This colony has affected the local usages, as well as the denominations of things and places along the northern coast of Germany. It must be presumed that a large proportion of the emigrants were diverted from agriculture to people the commercial cities which grew up in the twelfth century upon that coast.

* Ingulfus tells us that the commissioners were pious enough to favour Croyland, returning its possessions inaccurately, both as to measurement and value; non ad verum pretium, nec ad verum spatium nostrum monasterium librabant miseri corditer, præcaventes in futurum regis exactionibus, p. 79. I may just observe, by-the-way, that Ingulfus gives the plain meaning of the word Domesday, which has been disputed. The book was so called, he says, pro suâ generalitate omnia tenementa totius terræ integrè continente; that is it was as general and conclusive as the last judgment will be.

† 1 Gale xv. Script. p. 7[illegible]

abbey of Croyland and villages in that neighbourhood followed this example.* This early instance of parochial enclosure is not to be overlooked in the history of social progress. By the statute of Merton, in the 20th of Henry III., the lord is permitted to approve, that is, to enclose, the waste lands of his manor, provided he leave sufficient common or pasture for the freeholders. Higden, a writer who lived about the time of Richard II., says, in reference to the number of hydes and vills of England at the conquest, that by clearing of woods and ploughing up wastes, there were many more of each in his age than formerly.† And it might be easily presumed, independently of proof, that woods were cleared, marshes drained, and wastes brought into tillage, during the long period that the house of Plantagenet sat on the throne. From manorial surveys indeed, and similar instruments, it appears that in some places there was nearly as much ground cultivated in the reign of Edward III. as at the present day. The condition of different counties, however, was very far from being alike, and in general the northern and western parts of England were the most backward.‡

The culture of arable land was very imperfect. Fleta remarks, in the reign of Edward I. or II., that unless an acre yielded more than six bushels of corn, the farmer would be a loser and the land yield no rent.§ And Sir John Cullum, from very minute accounts, has calculated that nine or ten bushels were a full average crop on an acre of wheat. An amazing excess of tillage accompanied, and partly, I suppose, produced this imperfect cultivation. In Hawsted, for example, under Edward I., there were thirteen or fourteen hundred acres of arable, and only forty-five of meadow ground. A similar disproportion occurs almost invariably in every account we possess.‖ This seems inconsistent with the low price of cattle. But we must recollect that the common pasture, often the most extensive part of a manor, is not included, at least by any specific measurement, in these surveys. The rent of land differed of course materially; sixpence an acre seems to have been about the average for arable land in the thirteenth century,* though meadow was at double or treble that sum. But the landlords were naturally solicitous to augment a revenue that became more and more inadequate to their luxuries. They grew attentive to agricultural concerns, and perceived that a high rate of produce, against which their less enlightened ancestors had been used to clamour, would bring much more into their coffers than it took away. The exportation of corn had been absolutely prohibited. But the statute of the 15th Henry VI., c. 2, reciting that "on this account farmers, and others who use husbandry, cannot sell their corn but at a low price, to the great damage of the realm," permits it to be sent anywhere but to the king's enemies, so long as the quarter of wheat shall not exceed 6*s.* 8*d.* in value, or that of barley 3*s.* The price of wool was fixed in the thirty-second year of the same reign at a minimum, below which no person was suffered to buy it, though he might give more;† a provision neither wise nor equitable, but obviously suggested by the same motive. Whether the rents of land were augmented in any degree through these measures, I have not perceived; their great rise took place in the reign of Henry VIII., or rather afterward.‡ The usual price of land under Edward IV. seems to have been ten years purchase.§

Its condition in France and Italy.

It may easily be presumed that an English writer can furnish very little information as to the state of agriculture in foreign countries. In such works relating to France as have fallen within my reach, I have found nothing satisfactory, and cannot pretend to determine whether the natural tendency of mankind to ameliorate their condition had a greater influence in promoting agriculture, or the vices inherent in the actual order of society, and

* Communi plebiscito viritim inter se diviserunt, et quidam suas portiones agricolantes, quidam ad fœnum conservantes, quidam ut prius ad pasturam suorum animalium separaliter jacere permittentes, terram pinguem et uberem repererunt, p. 94.

† 1 Gale, xv. Script., p. 201.

‡ A good deal of information upon the former state of agriculture will be found in Cullum's History of Hawsted. Blomefield's Norfolk is in this respect among the most valuable of our local histories. Sir Frederick Eden, in the first part of his excellent work on the poor, has collected several interesting facts.

§ L. ii., c. 8.

‖ Cullum, p. 100, 220. Eden's State of Poor, &c., p. 48. Whitaker's Craven, p. 45, 376.

* I infer this from a number of passages in Blomefield, Cullum, and other writers. Hearne says that an acre was often called Solidata terræ; because the yearly rent of one *on the best land* was a shilling.—Lib. Nig. Scacc., p. 31

† Rot. Parl., vol. v., p. 275.

‡ A passage in Bishop Latimer's sermons, too often quoted to require repetition, shows that land was much underlet about the end of the fifteenth century. His father, he says, kept half a dozen husbandmen, and milked thirty cows, on a farm of three or four pounds a year. It is not surprising that he lived as plentifully as his son describes.

§ Rymer, t. xii., p. 204.

those public misfortunes to which that kingdom was exposed, in retarding it.* The state of Italy was far different; the rich Lombard plains, still more fertilized by irrigation, became a garden, and agriculture seems to have reached the excellence which it still retains. The constant warfare indeed of neighbouring cities is not very favourable to industry; and upon this account we might incline to place the greatest territorial improvement of Lombardy at an era rather posterior to that of her republican government; but from this it primarily sprung; and without the subjugation of the feudal aristocracy, and that perpetual demand upon the fertility of the earth which an increasing population of citizens produced, the valley of the Po would not have yielded more to human labour than it had done for several preceding centuries.† Though Lombardy was extremely populous in the thirteenth and fourteenth centuries, she exported large quantities of corn.‡ The very curious treatise of Crescentius exhibits the full details of Italian husbandry about 1300, and might afford an interesting comparison to those who are acquainted with its present state. That state, indeed, in many parts of Italy, displays no symptoms of decline. But whatever mysterious influence of soil or climate has scattered the seeds of death on the western regions of Tuscany, had not manifested itself in the middle ages. Among uninhabitable plains, the traveller is struck by the ruins of innumerable castles and villages, monuments of a time when pestilence was either unfelt, or had at least not forbade the residence of mankind. Volterra, whose deserted walls look down upon that tainted solitude, was once a small but free republic; Siena, round whom, though less depopulated, the malignant influence hovers, was once almost the rival of Florence. So melancholy and apparently irresistible a decline of culture and population through physical causes, as seems to have gradually overspread a large portion of Italy, has not perhaps been experienced in any other part of Europe, unless we except Iceland.

Gardening.

The Italians of the fourteenth century seem to have paid some attention to an art, of which, both as related to cultivation and to architecture, our own forefathers were almost entirely ignorant. Crescentius dilates upon horticulture, and gives a pretty long list of herbs both esculent and medicinal.* His notions about the ornamental department are rather beyond what we should expect, and I do not know that his scheme of a flower-garden could be much amended. His general arrangements, which are minutely detailed with evident fondness for the subject, would of course appear too formal at present; yet less so than those of subsequent times; and though acquainted with what is called the topiary art, that of training or cutting trees into regular figures, he does not seem to run into its extravagance. Regular gardens, according to Paulmy, were not made in France till the sixteenth or even seventeenth century;† yet one is said to have existed at the Louvre, of much older construction.‡ England, I believe, had nothing of the ornamental kind, unless it were some trees regularly disposed in the orchard of a monastery. Even the common horticultural art for culinary purposes, though not entirely neglected, since the produce of gardens is sometimes mentioned in ancient deeds had not been cultivated with much attention.◊ The esculent vegetables now most in use were introduced in the reign of Elizabeth, and some sorts a great deal later.

Changes in value of money.

I should leave this slight survey of economical history still more imperfect, were I to make no observation on the relative values of money. Without something like precision in our notions upon this subject, every statistical inquiry becomes a source of confusion and error. But considerable difficulties attend the discussion. These arise principally from two causes; the inaccuracy or partial representations of historical writers, on whom we are accustomed too implicitly to rely, and the change of manners, which renders a certain command over articles of purchase less adequate to our wants than it was in former ages.

The first of these difficulties is capable of being removed by a circumspect use of authorities. When this part of statistical history began to excite attention, which was hardly perhaps before the publication of Bishop Fleetwood's Chronicon Preciosum, so few authentic documents had been published with respect to prices, that inquirers were glad to have recourse

* Velley and Villaret scarcely mention the subject; and Le Grand merely tells us that it was entirely neglected; but the details of such an art even in its state of neglect might be interesting.

* Muratori, Dissert. 21. † Denina, l. xi., c. 7.

* Denina, l. vi.

† Idem, t. iii., p. 145; t. xxxi., p. 258.

‡ De la Mare, Traité de la Police, t. iii., p. 380

◊ Eden's State of Poor, vol. i., p. 51

to historians, even when not contemporary, for such facts as they had thought fit to record. But these historians were sometimes too distant from the times concerning which they wrote, and too careless in their general character, to merit much regard; and even when contemporary, were often credulous, remote from the concerns of the world, and, at the best, more apt to register some extraordinary phenomenon of scarcity or cheapness, than the average rate of pecuniary dealings. The one ought, in my opinion, to be absolutely rejected as testimonies, the other to be sparingly and diffidently admitted.* For it is no longer necessary to lean upon such uncertain witnesses. During the last century a very laudable industry has been shown by antiquaries in the publication of account-books belonging to private persons, registers of expenses in convents, returns of markets, valuations of goods, tavern-bills, and, in short, every document, however trifling in itself, by which this important subject can be illustrated. A sufficient number of such authorities, proving the ordinary tenour of prices, rather than any remarkable deviations from it, are the true basis of a table, by which all changes in the value of money should be measured. I have little doubt but that such a table might be constructed from the data we possess, with tolerable exactness, sufficient at least to supersede one often quoted by political economists, but which appears to be founded upon very superficial and erroneous inquiries.*

I is by no means required that I sh ald here offer such a table of values, which, as to every country except England, I have no means of constructing and which, even as to England, would be subject to many difficulties. But a reader unaccustomed to these investigations ought to have some assistance in comparing the prices of ancient times with those of his own. I will therefore, without attempting to ascend very high, for we have really no sufficient data as to the period immediately subsequent to the conquest, much less that which preceded, endeavour at a sort of approximation for the thirteenth and fifteenth centuries. In the reigns of Henry III. and Edward I., previously to the first debasement of the coin by the latter in 1301, the ordinary price of a quarter of wheat appears to have been about four shillings, and that of barley and oats in proportion. A sheep was rather sold high at a shilling, and an ox might be reckoned at ten or twelve.† The value of cattle is of course dependant upon their breed and condition; and we have unluckily no early account of butcher's meat; but we can hardly take a less multiple than about thirty for animal food, and eighteen or twenty for corn, in order to bring the prices of the thirteenth century to a level with those of the present day.‡ Combining the two, and setting the comparative dearness of cloth against the cheapness of fuel and many other articles, we may perhaps consider any given sum under Henry III. and Edward I. as equivalent in general command

* Sir F. Eden, whose table of prices, though capable of some improvement, is perhaps the best that has appeared, would, I think, have acted better, by omitting all references to mere historians, and relying entirely on regular documents. I do not, however, include local histories, such as the Annals of Dunstaple, when they record the market-prices of their neighbourhood, in respect of which the book last mentioned is almost in the nature of a register. Dr. Whitaker remarks the inexactness of Stowe, who says that wheat sold in London, A. D. 1514, at 20*s.* a quarter; whereas it appears to have been at 9*s.* in Lancashire, where it was always dearer than in the metropolis.—Hist. of Whalley, p. 97. It is an old mistake, into which Sir F. Eden has fallen, when he asserts and argues on the supposition, that the price of wheat fluctuated, in the thirteenth century, from 1*s.* to 6*l.* 8*s.* a quarter, vol. i., p. 18. Certainly, if any chronicler had mentioned such a price as the latter, equivalent to 150*l.* at present, we should either suppose that his text was corrupt, or reject it as an absurd exaggeration. But, in fact, the author has, through haste, mistaken 6*s.* 8*d.* for 6*l.* 8*s.*, as will appear by referring to his own table of prices, where it is set down rightly. It is observed by Mr. Macpherson, a very competent judge, that the arithmetical statements of the best historians of the middle ages are seldom correct, owing partly to their neglect of examination, and partly to blunders of transcribers.—Annals of Commerce, vol. i., p. 423

* The table of comparative values by Sir George Shuckburgh (Philosoph. Transact. for 1798, p. 196) is strangely incompatible with every result to which my own reading has led me. It is the hasty attempt of a man accustomed to different studies; and one can neither pardon the presumption of obtruding such a slovenly performance on a subject where the utmost diligence was required, nor the affectation with which he apologizes for "descending from the dignity of philosophy."

† Blomefield's History of Norfolk, and Sir J. Cullum's of Hawsted, furnish several pieces even at this early period. Most of them are collected by Sir F. Eden. Fleta reckons four shillings the average price of a quarter of wheat in his time, l. ii., c. 84. This writer has a digression on agriculture, whence, however, less is to be collected than we should expect.

‡ The fluctuations of price have unfortunately been so great of late years, that it is almost as difficult to determine one side of our equation as the other. Any reader, however, has it in his power to correct my proportions, and adopt a greater or less multiple, according to his own estimate of current prices, or the changes that may take place from the time when this is written [1816].

over commodities to about twenty-four or twenty-five times their nominal value at present. Under Henry VI. the coin had lost one third of its weight in silver, which caused a proportional increase of money prices;* but, so far as I can perceive, there had been no diminution in the value of that metal. We have not much information as to the fertility of the mines which supplied Europe during the middle ages; but it is probable that the drain of silver towards the East, joined to the ostentatious splendour of courts, might fully absorb the usual produce. By the statute 15 H. VI., c. 2, the price up to which wheat might be exported is fixed at 6*s.* 8*d.*, a point no doubt above the average; and the private documents of that period, which are sufficiently numerous, lead to a similar result.† Sixteen will be a proper multiple, when we would bring the general value of money in this reign to our present standard.*

But after ascertaining the proportional values of money at different periods by a comparison of the prices in several of the chief articles of expenditure, which is the only fair process, we shall sometimes be surprised at incidental facts of this class which seem irreducible to any rule. These difficulties arise not so much from the relative scarcity of particular commodities, which it is for the most part easy to explain, as from the change in manners and in the usual mode of living. We have reached in this age so high a pitch of luxury, that we can hardly believe or comprehend the frugality of ancient times; and have in general formed mistaken notions as to the habits of expenditure which then prevailed. Accustomed to judge of feudal and chivalrous ages by works of fiction, or by historians who embellished their writings with accounts of occasional festivals and tournaments, and sometimes inattentive enough to transfer the manners of the seventeenth to the fourteenth century, we are not at all aware of the usual simplicity with which the gentry lived under Edward I. or even Henry VI. They drank little wine; they had no foreign luxuries; they rarely or never kept male servants, except for husbandry; their horses, as we may guess by the price, were indifferent; they seldom travelled beyond their county. And even their hospitality must have been greatly limited, if the value of manors were really no greater than we find it in many surveys. Twenty-four seems a sufficient multiple when we would raise

* I have sometimes been surprised at the facility with which prices adjusted themselves to the quantity of silver contained in the current coin, in ages which appear too ignorant and too little commercial for the application of this mercantile principle. But the extensive dealings of the Jewish and Lombard usurers, who had many debtors in almost all parts of the country, would of itself introduce a knowledge, that silver, not its stamp, was the measure of value. I have mentioned in another place (vol. i., p. 185) the heavy discontents excited by this debasement of the coin in France; but the more gradual enhancement of nominal prices in England seems to have prevented any strong manifestations of a similar spirit at the successive reductions in value which the coin experienced from the year 1300. The connexion however between commodities and silver was well understood. Wykes, an annalist of Edward I.'s age, tells us that the Jews clipped our coin till it retained hardly half its due weight, the effect of which was a general enhancement of prices and decline of foreign trade: Mercatores transmarini cum mercimoniis suis regnum Angliæ minus solito frequentabant; necnon quod omnimoda venalium genera incomparabiliter solito fuerunt cariora.—2 Gale, xv. Script., p. 107. Another chronicler of the same age complains of bad foreign money, alloyed with copper; nec erat in quatuor aut quinque ex iis pondus unius denarii argenti. . . . .Eratque pessimum sæculum pro tali monetâ, et fiebant commutationes plurimæ in emptione et venditione rerum. Edward, as the historian informs us, bought in this bad money at a rate below its value, in order to make a profit; and fined some persons who interfered with his traffic.—W. Hemingford, ad ann. 1299.

† These will chiefly be found in Sir F. Eden's table of prices; the following may be added from the account-book of a convent between 1415 and 1425. Wheat varied from 4*s.* to 6*s.*—barley from 3*s.* 2*d.* to 4*s.* 10*d.*—oats from 1*s.* 8*d.* to 2*s.* 4*d.*—oxen from 12*s.* to 16*s.*—sheep from 1*s.* 2*d* to 1*s.* 4*d.*—butter ¾*d.* per lb.—eggs twenty-five for 1*d.*—cheese ½*d.* per lb.—Lansdowne MSS., vol. i., Nos. 28 and 29. These prices do not always agree with those given in other documents of equal authority in the same period; but the value of provisions varied in different countries, and still more so in different seasons of the year.

* I insert the following comparative table of English money from Sir Frederick Eden. The unit, or present value, refers of course to that of the shilling before the last coinage, which reduced it.

		Value of pound sterling present money.			Proportion.
Conquest,	1066	2	18	1¼	2.906
28 E. I.,	1300	2	17	5	2.871
18 E. III.,	1344	2	12	5¼	2.622
20 E. III.,	1346	2	11	8	2.583
27 E. III.,	1353	2	6	6	2.325
13 H. IV.,	1412	1	18	9	1 937
4 E. IV.,	1464	1	11	0	1 55
18 H. VIII.,	1527	1	7	6¾	1 378
34 H. VIII.,	1543	1	3	3¼	1.163
36 H. VIII.,	1545	0	13	11¼	0.698
37 H. VIII.,	1546	0	9	3¾	0.466
5 E. VI.,	1551	0	4	7¾	0.232
6 E. VI.,	1552	1	0	6¾	1.028
1 Mary,	1553	1	0	5¾	1.024
2 Eliz.,	1560	1	0	8	1.033
43 Eliz.,	1601	1	0	0	1.000

a sum mentioned by a writer under Edward I. to the same real value expressed in our present money, but an income of £10 or £20 was reckoned a competent estate for a gentleman; at least the lord of a single manor would seldom have enjoyed more. A knight who possessed £150 per annum passed for extremely rich.* Yet this was not equal in command over commodities to £4000 at present. But this income was comparatively free from taxation, and its expenditure lightened by the services of his villeins. Such a person, however, must have been among the most opulent of country gentlemen. Sir John Fortescue speaks of five pounds a year as "a fair living for a yeoman," a class of whom he is not at all inclined to diminish the importance.† So, when Sir William Drury, one of the richest men in Suffolk, bequeathed in 1493 fifty marks to each of his daughters, we must not imagine that this was of greater value than four or five hundred pounds at this day, but remark the family pride, and want of ready money, which induced country gentlemen to leave their younger children in poverty.‡ Or, if we read that the expense of a scholar at the university in 1514 was but five pounds annually, we should err in supposing that he had the liberal accommodation which the present age deems indispensable, but consider how much could be afforded for about sixty pounds, which will be not far from the proportion. And what would a modern lawyer say to the following entry in the churchwarden's accounts of St. Margaret, Westminster, for 1476: "Also paid to Roger Fylpott, learned in the law, for his counsel giving, 3*s.* 8*d.*, *with fourpence for his dinner*?"§ Though fifteen times the fee might not seem altogether inadequate at present, five shillings would hardly furnish the table of a barrister, even if the fastidiousness of our manners would admit of his accepting such a dole. But this fastidiousness, which considers certain kinds of remuneration degrading to a man of liberal condition, did not prevail in those simple ages. It would seem rather strange that a young lady should learn needle work and good-breeding in a family of superior rank, paying for her board; yet such was the laudable custom of the fifteenth and even sixteenth centuries, as we perceive by the Paston Letters, and even later authorities.*

Labourers better paid than at present.

There is one very unpleasing remark which every one who attends to the subject of prices will be induced to make, that the labouring classes, especially those engaged in agriculture, were better provided with the means of subsistence in the reign of Edward III. or of Henry VI. than they are at present. In the fourteenth century, Sir John Cullum observes, a harvest man had fourpence a day, which enabled him in a week to buy a comb of wheat; but to buy a comb of wheat, a man must now (1784) work ten or twelve days.† So, under Henry VI., if meat was at a farthing and a half the pound, which I suppose was about the truth, a labourer earning threepence a day, or eighteen pence in the week, could buy a bushel of wheat at six shillings the quarter, and twenty-four pounds of meat for his family. A labourer at present, earning twelve shillings a week, can only buy half a bushel of wheat at eighty shillings the quarter, and twelve pounds of meat at sevenpence. Several acts of parliament regulate the wages that might be paid to labourers of different kinds. Thus the statute of labourers, in 1350, fixed the wages of reapers during harvest at threepence a day without diet, equal to five shillings at present; that of 23 H. VI., c. 12, in 1444, fixed the reapers' wages at fivepence, and those of common workmen in building at 3½*d.*, equal to 6*s.* 8*d.* and 4*s.* 8*d.*; that of 11 H. VII., c. 22, in 1496, leaves the wages of labourers in harvest as before, but rather increases those of ordinary workmen. The yearly wages of a chief hind or shepherd, by the act of 1444, were £1. 4*s.*, equivalent to about £20; those of a common servant in husbandry, 18*s.* 4*d.*, with meat and drink; they were somewhat augmented by the statute of 1496.‡ Yet, although these

* Macpherson's Annals, p. 424, from Matt. Paris.

† Difference of Limited and Absolute Monarchy, p. 133.

‡ Hist. of Hawsted, p. 141

§ Nicholls's Illustrations, p 2. One fact of this class did, I own, stagger me. The great Earl of Warwick writes to a private gentleman, Sir Thomas Tudenham, begging the loan of ten or twenty pounds to make up a sum he had to pay. —Paston Letters, vol. i., p. 84. What way shall we make this commensurate to the present value of money? But an ingenious friend suggested, what I do not question is the case, that this was one of many letters addressed to the adherents of Warwick, in order to raise by their contributions a considerable sum. It is curious, in this light, as an illustration of manners.

* Paston Letters, vol. i., p. 244. Cullum's Hawsted, p. 182.

† Hist. of Hawsted, p. 228.

‡ See these rates more at length in Eden's State of the Poor, vol. i., p. 32, &c.

wages are regulated as a maximum, by acts of parliament, which may naturally be supposed to have had a view rather towards diminishing than enhancing the current rate, I am not fully convinced that they were not rather beyond it; private accounts at least do not always correspond with these statutable prices.* And it is necessary to remember, that the uncertainty of employment, natural to so imperfect a state of husbandry, must have diminished the labourers' means of subsistence. Extreme dearth, not more owing to adverse seasons than to improvident consumption, was frequently endured.† But, after every allowance of this kind, I should find it difficult to resist the conclusion, that however the labourer has derived benefit from the cheapness of manufactured commodities, and from many inventions of common utility, he is much inferior in ability to support a family to his ancestors three or four centuries ago. I know not why some have supposed that meat was a luxury seldom obtained by the labourer. Doubtless he could not have procured as much as he pleased. But, from the greater cheapness of cattle, as compared with corn, it seems to follow, that a more considerable portion of his ordinary diet consisted of animal food than at present. It was remarked by Sir John Fortescue, that the English lived far more upon animal diet than their rivals the French; and it was natural to ascribe their superior strength and courage to this cause.‡ I should feel much satisfaction in being convinced that no deterioration in the state of the labouring classes has really taken place; yet it cannot, I think, appear extraordinary to those who reflect, that the whole population of England, in the year 1377, did not much exceed 2,300,000 souls about one fifth of the results upon the last enumeration, an increase with which that of the fruits of the earth cannot be supposed to have kept an even ppace.*

Improvement in the moral character of Europe.

The second head to which I referred the improvements of European society in the latter period of the middle ages, comprehends several changes, not always connected with each other, which contributed to inspire a more elevated tone of moral sentiment, or at least to restrain the commission of crimes. But the general effect of these upon the human character is neither so distinctly to be traced, nor can it be arranged with so much attention to chronology as the progress of commercial wealth, or of the arts that depend upon it. We cannot, from any past experience, indulge the pleasing vision of a constant and parallel relation between the moral and intellectual energies, the virtues and the civilization of mankind. Nor is any problem connected with philosophical history more difficult than to compare the relative characters of different generations, especially if we include a large geographical surface in our estimate. Refinement has its evils as well as barbarism; the virtues that elevate a nation in one century pass in the next to a different region; vice changes its form without losing its essence; the marked features of individual character stand out in relief from the surface of history, and mislead our judgment as to the general course of manners; while political revolutions and a bad constitution of government may always undermine or subvert the improvements to which more favourable circumstances have contributed. In comparing, therefore, the fifteenth with the twelfth century, no one would deny the vast increase of navigation and manufactures, the superior refinement of manners, the greater diffusion of literature. But should I assert that man had raised himself in the latter period above the moral degradation of a more barbarous age, I might be met by the question whether history bears witness to any greater excesses of rapine and inhumanity than in the wars of France and England under Charles VII., or whether the rough patriotism and fervid passions of the Lombards in the twelfth century

* In the Archæologia, vol. xviii., p. 281, we have a bailiff's account of expenses in 1387, where it appears that a ploughman had sixpence a week, and five shillings a year, with an allowance of diet; which seems to have been only pottage. These wages are certainly not more than fifteen shillings a week in present value; which, though materially above the average rate of agricultural labour, is less so than some of the statutes would lead us to expect. Other facts may be found of a similar nature.

† See that singular book, Piers Plowman's Vision, p. 145 (Whitaker's edition), for the different modes of living before and after harvest. The passage may be found in Ellis's Specimens, vol. i., p. 151.

‡ Fortescue's Difference between Abs. and Lim. Monarchy, p. 19. The passages in Fortescue which bear on his favourite theme, the liberty and consequent happiness of the English, are very important, and triumphantly refute those superficial writers who would make us believe that they were a set of beggarly slaves

* Besides the books to which I have occasionally referred, Mr. Ellis's Specimens of English Poetry, vol. i., chap. 13, contain a short digression but from well-selected materials, on the private life of the English in the middling and lower rank about the fifteenth century

were not better than the systematic treachery of their servile descendants three hundred years afterward. The proposition must therefore be greatly limited; yet we can scarcely hesitate to admit, upon a comprehensive view, that there were several changes during the four last of the middle ages, which must naturally have tended to produce, and some of which did unequivocally produce, a meliorating effect, within the sphere of their operation, upon the moral character of society.

Elevation of the lower ranks.

The first, and perhaps the most important of these, was the gradual elevation of those whom unjust systems of polity had long depressed; of the people itself, as opposed to the small number of rich and noble, by the abolition or desuetude of domestic and predial servitude, and by the privileges extended to corporate towns. The condition of slavery is indeed perfectly consistent with the observance of moral obligations; yet reason and experience will justify the sentence of Homer, that he who loses his liberty loses half his virtue. Those who have acquired, or may hope to acquire, property of their own, are most likely to respect that of others; those whom law protects as a parent are most willing to yield her a filial obedience; those who have much to gain by the good-will of their fellow-citizens are most interested in the preservation of an honourable character. I have been led, in different parts of the present work, to consider these great revolutions in the order of society under other relations than that of their moral efficacy; and it will therefore be unnecessary to dwell upon them; especially as this efficacy is indeterminate, though, I think, unquestionable, and rather to be inferred from general reflections, than capable of much illustration by specific facts.

Police.

We may reckon, in the next place, among the causes of moral improvement, a more regular administration of justice according to fixed laws, and a more effectual police. Whether the courts of judicature were guided by the feudal customs or the Roman law, it was necessary for them to resolve litigated questions with precison and uniformity. Hence a more distinct theory of justice and good faith was gradually apprehended; and the moral sentiments of mankind were corrected, as on such subjects they often require to be, by clearer and better grounded inferences of reasoning. Again, though it cannot be said that lawless rapine was perfectly restrained even at the end of the fifteenth century, a sensible amendment had been everywhere experienced. Private warfare, the licensed robbery of feudal manners, had been subjected to so many mortifications by the kings of France, and especially by St. Louis, that it can hardly be traced beyond the fourteenth century. In Germany and Spain it lasted longer; but the various associations for maintaining tranquillity in the former country had considerably diminished its violence before the great national measure of public peace adopted under Maximilian.* Acts of outrage committed by powerful men became less frequent as the executive government acquired more strength to chastise them. We read that St. Louis, the best of French kings, imposed a fine upon the Lord of Vernon for permitting a merchant to be robbed in his territory between sunrise and sunset. For, by the customary law, though in general ill observed, the lord was bound to keep the roads free from depredators in the daytime, in consideration of the toll he received from passengers.† The same prince was with difficulty prevented from passing a capital sentence on Enguerrand de Coucy, a baron of France, for a murder.‡ Charles the Fair actually put to death a nobleman of Languedoc for a series of robberies, notwithstanding the intercession of the provincial nobility.§ The towns established a police of their own for internal security, and rendered themselves formidable to neighbouring plun-

* Besides the German historians, see Du Cange v. Ganerbium, for the confederacies in the empire, and Hermandatum for those in Castile. These appear to have been merely voluntary associations, and perhaps directed as much towards the prevention of robbery as of what is strictly called private war. But no man can easily distinguish offensive war from robbery except by its scale; and where this was so considerably reduced, the two modes of injury almost coincide. In Aragon there was a distinct institution for the maintenance of peace, the kingdom being divided into unions or juntas, with a chief officer, called Suprajunctarius, at their head.—Du Cange, v. Juncta.

† Henault, Abrégé Chronol. à l'an 1255. The institutions of Louis IX. and his successors relating to police, form a part, though rather a smaller part than we should expect from the title, of an immense work, replete with miscellaneous information, by Delamare, Traité de la Police, 4 vols. in folio. A sketch of them may be found in Velly, t. v., p. 349; t. xviii., p. 437.

‡ Velly, t. v., p. 162, where this incident is told in an interesting manner from William de Nangis. Boulainvilliers has taken an extraordinary view of the king's behaviour.—Hist. de l'Ancient Gouvernement, t. ii., p. 26. In his eyes princes and plebeians were made to be the slaves of a feudal aristocracy.

§ Velly, t. viii., p. 132.

derers. Finally though not before the reign of Louis XI., an armed force was established for the preservation of police.* Various means were adopted in England to prevent robberies, which indeed were not so frequently perpetrated as they were on the continent, by men of high condition. None of these, perhaps, had so much efficacy as the frequent sessions of judges under commissions of jail delivery. But the spirit of this country has never brooked that coercive police which cannot exist without breaking in upon personal liberty by irksome regulations and discretionary exercise of power; the sure instrument of tyranny, which renders civil privileges at once nugatory and insecure, and by which we should dearly purchase some real benefits connected with its slavish discipline.

Religious sects.

I have some difficulty in adverting to another source of moral improvement during this period, the growth of religious opinions adverse to those of the established church, both on account of its great obscurity, and because many of these heresies were mixed up with an excessive fanaticism. But they fixed themselves so deeply in the hearts of the inferior and more numerous classes, they bore, generally speaking, so immediate a relation to the state of manners, and they illustrate so much that more visible and eminent revolution which ultimately arose out of them in the sixteenth century, that I must reckon these among the most interesting phenomena in the progress of European society.

Many ages elapsed, during which no remarkable instance occurs of a popular deviation from the prescribed line of belief; and pious Catholics console themselves by reflecting that their forefathers, in those times of ignorance, slept at least the sleep of orthodoxy, and that their darkness was interrupted by no false lights of human reasoning.† But from the twelfth century this can no longer be their boast. An inundation of heresy broke in that age upon the church, which no persecution was able thoroughly to repress, till it finally overspread half the surface of Europe. Of this religious innovation we must seek the commencement in a different part of the globe. The Manicheans afford an eminent example of that durable attachment to a traditional creed, which so many ancient sects, especially in the East, have cherished through the vicissitudes of ages, in spite of persecution and contempt. Their plausible and widely extended system had been in early times connected with the name of Christianity, however incompatible with its doctrines and its history. After a pretty long obscurity, the Manichean theory revived with some modification in the western parts of Armenia, and was propagated in the eighth and ninth centuries by a sect denominated Paulicians. Their tenets are not to be collected with absolute certainty from the mouths of their adversaries, and no apology of their own survives. There seems, however, to be sufficient evidence that the Paulicians, though professing to acknowledge and even to study the apostolical writings, ascribed the creation of the world to an evil deity, whom they supposed also to be the author of the Jewish law, and consequently rejected all the Old Testament. Believing, with the ancient Gnostics, that our Saviour was clothed on earth with an impassive celestial body,* they denied the reality of his death

* Velly, t. xviii., p. 437. Fleury, 3me Discours sur l'Hist. Ecclés.

* The most authentic account of the Paulicians is found in a little treatise of Petrus Siculus, who lived about 870, under Basil the Macedonian. He had been employed on an embassy to Tephrico, the principal town of these heretics, so that he might easily be well informed; and, though he is sufficiently bigoted, I do not see any reason to question the general truth of his testimony, especially as it tallies so well with what we learn of the predecessors and successors of the Paulicians They had rejected several of the Manichean doctrines, those, I believe, which were borrowed from the Oriental, Gnostic, and Cabbalistic philosophy of emanation; and therefore readily condemned Manes, *προθυμως αναθεματιζουσι Μανητα.* But they retained his capital errors, so far as regarded the principle of dualism, which he had taken from Zerdusht's religion, and the consequences he had derived from it. Petrus Siculus enumerates six Paulician heresies. 1. They maintained the existence of two deities; the one evil, and the creator of this world, the other good, called *πατηρ επουρανιος*, the author of that which is to come. 2. They refused to worship the Virgin, and asserted that Christ brought his body from Heaven. 3. They rejected the Lord's Supper: 4. And the adoration of the cross. 5. They denied the authority of the Old Testament, but admitted the New, except the epistles of St. Peter, and perhaps the Apocalypse 6. They did not acknowledge the order of priests.

There seems every reason to suppose that the Paulicians, notwithstanding their mistakes, were endowed with sincere and zealous piety, and studious of the Scriptures. A Paulician woman asked a young man if he had read the Gospels; he replied, that laymen were not permitted to do so, but only the clergy: *ουκ εξεστιν ημιν τοις κοσμικοις ουτε τουτα αναγινωσκειν, ει μη τοις ἱερευσι μονοις*, p. 57. A curious proof that the Scriptures were already forbidden in the Greek church, which, I am inclined to believe, notwithstanding the leniency with which Protestant writers have treated it, was always more corrupt and more intolerant than the Latin

and resurrection These errors exposed them to a long and cruel persecution, during which a colony of exiles was planted by one of the Greek emperors in Bulgaria.* From this settlement they silently promulgated their Manichean creed over the western regions of Christendom. A large part of the commerce of those countries with Constantinople was carried on for several centuries by the channel of the Danube. This opened an immediate intercourse with the Paulicians, who may be traced up that river through Hungary and Bavaria, sometimes taking the route of Lombardy into Swisserland and France.† In the last country, and especially in its southern and eastern provinces, they became conspicuous under a variety of names such as Catharists, Picards, Paterins, but above all, Albigenses. It is beyond a doubt that many of these sectaries owed their origin to the Paulicians, the appellation of Bulgarians was distinctively bestowed upon them; and, according to some writers, they acknowledged a primate or patriarch resident in that country.* The tenets ascribed to them by all contemporary authorities coincide so remarkably with those held by the Paulicians, and in earlier times by the Manicheans, that I do not see how we can reasonably deny what is confirmed by separate and uncontradictory testimonies, and contains no intrinsic want of probability.†

* Gibbon, c. 54. This chapter of the historian of the Decline and Fall upon the Paulicians appears to be accurate, as well as luminous, and is at least far superior to any modern work on the subject.

† It is generally agreed that the Manicheans from Bulgaria did not penetrate into the west of Europe before the year 1000; and they seem to have been in small numbers till about 1140. We find them, however, early in the eleventh century. Under the reign of Robert, in 1007, several heretics were burnt at Orleans for tenets which are represented as Manichean.—Velly, t. ii., p. 307. These are said to have been imported from Italy; and the heresy began to strike out in that country about the same time.—Muratori, Dissert. 60.—(Antichità Italiane, t. iii., p. 304.) The Italian Manicheans were generally called Paterini, the meaning of which word has never been explained We find few traces of them in France at this time; but about the beginning of the twelfth century, Guibert, bishop of Soissons, describes the heretics of that city, who denied the reality of the death and resurrection of Jesus Christ, and rejected the sacraments.—Hist Littéraire de la France, t. x., p. 451. Before the middle of that age, the Cathari, Henricians, Petrobussians, and others appear, and the new opinions attracted universal notice. Some of these sectaries, however, were not Manicheans.—Mosheim, vol. iii., p. 116.

The acts of the inquisition of Toulouse, published by Limborch, from an ancient manuscript (stolen, as I presume, though certainly not by himself, out of the archives of that city), contain many additional proofs that the Albigenses held the Manichean doctrine. Limborch himself will guide the reader to the principal passages, p. 30. In fact, the proof of Manicheism among the heretics of the twelfth century is so strong (for I have confined myself to those of Languedoc, and could easily have brought other testimony as to the Cathari), that I should never have thought of arguing the point, but for the confidence of some modern ecclesiastical writers. What can we think of one who says, "It was not unusual to stigmatize new sects with the odious name of Manichees, though *I know no evidence* that there were any real remains of that ancient sect in the twelfth century."—Milner's History of the Church, vol. iii., p. 380. Though this writer was by no means learned enough for the task he undertook, he could not be ignorant of facts related by Mosheim and other common historians.

I will only add, in order to obviate cavilling, that I use the word Albigenses for the Manichean sects, without pretending to assert that their doctrines prevailed more in the neighbourhood of Albi than elsewhere. The main position is, that a large part of the Languedocian heretics against whom the crusade was directed had imbibed the Paulician opinions. If any one chooses rather to call them Catharists, it will not be material.

* Mat. Paris, p. 267. (A. D. 1223.) Circa dies istos, hæretici Albigenses constituerunt sibi Antipapam in finibus Bulgarorum, Croatiæ et Dalmatiæ, nomine Bartholomæum, &c. We are assured by good authorities that Bosnia was full of Manicheans and Arians as late as the middle of the fifteenth century.—Æneas Sylvius, p. 107 Spondanus, ad ann. 1460. Mosheim.

† There has been so prevalent a disposition among English divines to vindicate not only the morals and sincerity, but the orthodoxy of these Albigenses, that I deem it necessary to confirm what I have said in the text by some authorities, especially as few readers have it in their power to examine this very obscure subject. Petrus Monachus, a Cistercian monk, who wrote a history of the crusades against the Albigenses, gives an account of the tenets maintained by the different heretical sects. Many of them asserted two principles or creative beings; a good one for things invisible, an evil one for things visible; the former author of the New Testament, the latter of the Old. Novum Testamentum benigno deo, vetus vero maligno attribuebant; et illud omninò repudiabant, præter quasdam auctoritates, quas de Veteri Testamento, Novo sunt insertæ, quas ob Novi revelantiam Testamenti, recipere dignum æstimabant. A vast number of strange errors are imputed to them, most of which are not mentioned by Alanus, a more dispassionate writer.—Du Chesne, Scriptores Francorum, t. v., p. 556. This Alanus de Insulis, whose treatise against heretics, written about 1200, was published by Masson at Lyons in 1612, has left, I think, conclusive evidence of the Manicheism of the Albigenses. He states their argument upon every disputed point as fairly as possible, though his refutation is of course more at length. It appears that great discrepances of opinion existed among these heretics, but the general tenour of their doctrines is evidently Manichean. Aiunt hæretici temporis nostri quod duo sunt principia rerum, principium lucis et principium tenebrarum, &c. This opinion, strange as we may think it, was supported by Scriptural texts, so insufficient is a mere acquaintance with the sacred writings to secure unlearned and prejudiced minds

But though the derivation of these heretics called Albigenses from Bulgaria is sufficiently proved, it is by no means to be concluded that all who incurred the same imputation either derived their faith from the same country, or had adopted the Manichean theory of the Paulicians. From the very invectives of their enemies, and the acts of the inquisition, it is manifest that almost every shade of heterodoxy was found among these dissidents, till it vanished in a single protestation against the wealth and tyranny of the clergy. Those who were absolutely free from any taint of Manicheism are properly called Waldenses; a name perpetually confounded in later times with that of Albigenses, but distinguishing a sect probably of separate origin, and at least of different tenets. These, according to the majority of writers, took their appellation from Peter Waldo, a merchant of Lyons, the parent, about the year 1160, of a congregation of seceders from the church, who spread very rapidly over France and Germany.*

Waldenses.

According to others, the original Waldenses were a race of uncorrupted shepherds, who, in the valleys of the Alps had shaken off, or perhaps never learned, the system of superstition on which the Catholic church depended for its ascendency. I am not certain whether their existence can be distinctly traced beyond the preaching of Waldo, but it is well known that the proper seat of the Waldenses or Vaudois has long continued to be in certain valleys of Piedmont. These pious and innocent sectaries, of whom the very monkish historians speak well, appear to have nearly resembled the modern Moravians. They had ministers of their own appointment, and denied the lawfulness of oaths and of capital

from the wildest perversions of their meaning! Some denied the reality of Christ's body; others his being the Son of God; many the resurrection of the body; some even of a future state. They asserted in general the Mosaic law to have proceeded from the devil, proving this by the crimes committed during its dispensation, and by the words of St. Paul, "the law entered that sin might abound." They rejected infant baptism, but were divided as to the reason; some saying that infants could not sin, and did not need baptism; others, that they could not be saved without faith, and consequently that it was useless. They held sin after baptism to be irremissible. It does not appear that they rejected either of the sacraments. They laid great stress upon the imposition of hands, which seems to have been their distinctive rite.

One circumstance, which both Alanus and Robertus Monachus mention, and which other authorities confirm, is their division into two classes; the Perfect, and the Credentes, or Consolati, both of which appellations are used. The former abstained from animal food and from marriage, and led in every respect an austere life. The latter were a kind of lay brethren, living in a secular manner. This distinction is thoroughly Manichean, and leaves no doubt as to the origin of the Albigenses. See Beausobre, Hist. du Manichéisme, t. ii., p. 762 and 777. This candid writer represents the early Manicheans as a harmless and austere set of enthusiasts, exactly what the Paulicians and Albigenses appear to have been in succeeding ages. As many calumnies were vented against one as the other.

* The contemporary writers seem uniformly to represent Waldo as the founder of the Waldenses; and I am not aware that they refer the locality of that sect to the valleys of Piedmont, between Exiles and Pignerol (see Leger's map), which have so long been distinguished as the native country of the Vaudois. In the acts of the inquisition, we find Waldenses, sive pauperes de Lugduno, used as equivalent terms; and it can hardly be doubted that the poor men of Lyons were the disciples of Waldo. Alanus, the second book of whose treatise against heretics is an attack upon the Waldenses, expressly derives them from Waldo. Petrus Monachus does the same. These seem strong authorities, as it is not easy to perceive what advantage they could derive from misrepresentation. It has been, however, a position zealously maintained by some modern writers of respectable name, that the people of the valleys had preserved a pure faith for several ages before the appearance of Waldo. I have read what is advanced on this head by Leger (Histoire des Eglises Vaudoises), and by Allix (Remarks on the Ecclesiastical History of the Churches of Piedmont), but without finding any sufficient proof for this supposition, which, nevertheless, is not to be rejected as absolutely improbable. Their best argument is deduced from an ancient poem called La Noble Loiçon, an original manuscript of which is in the public library of Cambridge. This poem is alleged to bear date in 1100, more than half a century before the appearance of Waldo. But the lines that contain the date are loosely expressed, and may very well suit with any epoch before the termination of the twelfth century.

Ben ha mil et cent ans compli entierament
Che fu scritta loro que sen al derier temp

Eleven hundred years are now gone and past,
Since thus it was written; these times are the last.

I have found, however, a passage in a late work, which remarkably illustrates the antiquity of Alpine protestantism, if we may depend on the date it assigns to the quotation. Mr. Planta's History of Swisserland, p. 93, 4to edit., contains the following note. "A curious passage, singularly descriptive of the character of the Swiss, has lately been discovered in a MS. chronicle of the abbey of Corvey, which appears to have been written about the beginning of the twelfth century. Religionem nostram, et omnium Latinæ ecclesiæ Christianorum fidem, laici ex Suaviâ, Suiciâ, et Bavariâ humiliare voluerunt; homines seducti ab antiquâ progenie simplicium hominum, qui Alpes et vicinium habitant, et semper amant antiqua. In Suaviam, Bavariam et Italiam borealem sæpe intrant illorum (ex Suiciâ) mercatores, qui biblia ediscunt memoriter, et ritus ecclesiæ aversantur, quos credunt esse novos. Nolunt imagines venerari, reliquias sanctorum aversantur, olera comeduni, raró mastican tes carnem, alii nunquam. Appellamus eos idcir có Manichæos. Horum quidam ab Hungariâ ad eos con venerunt," &c. It is a pity that the quotation has been broken off, as it might have illustrated the connexion of the Bulgarians with these sectaries

punishment. In other respects their opinions probably were not far removed from those usually called Protestant. A simplicity of dress, and especially the use of wooden sandals, was affected by this people.*

I have already had occasion to relate the severe persecution which nearly exterminated the Albigenses of Languedoc at the close of the twelfth century, and involved the counts of Toulouse in their ruin. The Catharists, a fraternity of the same Paulician origin, more dispersed than the Albigenses, had previously sustained a similar trial. Their belief was certainly a compound of strange errors with truth; but it was attended by qualities of a far superior lustre to orthodoxy, by a sincerity, a piety, and a self-devotion, that almost purified the age in which they lived.† It is always important to perceive that these high moral excellences have no necessary connexion with speculative truths; and upon this account I have been more disposed to state explicitly the real Manicheism of the Albigenses: especially as Protestant writers considering all the enemies of Rome as their friends, have been apt to place the opinions of these sectaries in a very false light. In the course of time, undoubtedly, the system of their Paulician teachers would have yielded, if the inquisitors had admitted the experiment, to a more accurate study of the Scriptures, and to the knowledge which they would have imbibed from the church itself. And, in fact, we find that the peculiar tenets of Manicheism died away after the middle of the thirteenth century, although a spirit of dissent from the established creed broke out in abundant instances during the two subsequent ages.

We are in general deprived of explicit testimonies in tracing the revolutions of popular opinion. Much must therefore be left to conjecture; but I am inclined to attribute a very extensive effect to the preaching of these heretics. They appear in various countries nearly during the same period, in Spain, Lombardy, Germany, Flanders, and England, as well as France. Thirty unhappy persons convicted of denying the sacraments, are said to have perished at Oxford by cold

* The Waldenses were always considered as much less erroneous in their tenets than the Albigenses or Manicheans. Erant præterea alii hæretici, says Robert Monachus in the passage above quoted, qui Waldenses dicebantur, a quodam Waldio nomine Lugdunensi. Hi quidem mali erant, sed comparatione aliorum hæreticorum longè minus perversi; in multis enim nobiscum conveniebant, in quibusdam dissentiebant. The only faults he seems to impute to them are the denial of the lawfulness of oaths and capital punishment, and the wearing wooden shoes. By this peculiarity of wooden sandals (sabots) they got the name of Sabbatati or Insabbatati.—(Du Cange.) William du Puy, another historian of the same time, makes a similar distinction. Erant quidam Ariani, quidam Manichæi, quidam etiam Waldenses sive Lugdunenses, qui licet inter se dissides, omnes tamen in animarum perniciem contra fidem Catholicam conspirabant; et illi quidem Waldenses contra alios acutissimè disputant.—Du Chesne, t. v., p. 666. Alanus, in his second book, where he treats of the Waldenses, charges them principally with disregarding the authority of the church and preaching without a regular mission. It is evident, however, from the acts of the Inquisition, that they denied the existence of purgatory; and I should suppose that, even at that time, they had thrown off most of the popish system of doctrine, which is so nearly connected with clerical wealth and power. The difference made in these records between the Waldenses and the Manichean sects, shows that the imputations cast upon the latter were not indiscriminate calumnies. See Limborch, p. 201 and 228.

The History of Languedoc, by Vaissette and Vich, contains a very good account of the sectaries in that country; but I have not immediate access to the book. I believe that proof will be found of the distinction between the Waldenses and Albigenses in t. iii., p. 466. But I am satisfied that no one who has looked at the original authorities will dispute the proposition. These Benedictin historians represent the Henricians, an early sect of reformers, condemned by the council of Lombez, in 1165, as Manichees. Mosheim considers them as of the Vaudois school. They appeared some time before Waldo.

† The general testimony of their enemies to the purity of morals among the Languedocian and Lyonese sectaries is abundantly sufficient. One Regnier, who had lived among them, and became afterward an inquisitor, does them justice in this respect.—See Turner's History of England for several other proofs of this. It must be confessed, that the Catharists are not free from the imputation of promiscuous licentiousness. But whether this was a mere calumny, or partly founded upon truth, I cannot determine. Their prototypes, the ancient Gnostics, are said to have been divided into two parties, the austere and the relaxed; both condemning marriage for opposite reasons. Alanus, in the book above quoted, seems to have taken up several vulgar prejudices against the Cathari. He gives an etymology of their name à catta; quia osculantur posteriora catti; in cujus specie, ut aiunt, appareret iis Lucifer, p. 146. This notable charge was brought afterward against the Templars.

As to the Waldenses, their innocence is out of all doubt. No book can be written in a more edifying manner than La Noble Loiçon, of which large extracts are given by Leger, in his Histoire des Eglises Vaudoises. Four lines are quoted by Voltaire (Hist. Universelle, c. 69) as a specimen of the Provençal language, though they belong rather to the patois of the valleys. But as he has not copied them rightly, and as they illustrate the subject of this note, I shall repeat them here from Leger, p. 28.

Que sel se troba alcun bon que vollia amar Dio
e temer Jeshu Xrist,
Que non vollia maudire, ni jura, ni mentir,
Ni avoutrar, ni aucire, ni penre de l'autruy,
Ni venjar se de li sio ennemie,
Ill' dison quel es Vaudes e degne de murir

and famine in the reign of Henry II. In every country the new sects appear to have spread chiefly among the lower people, which, while it accounts for the imperfect notice of historians, indicates a more substantial influence upon the moral condition of society than the conversion of a few nobles or ecclesiastics.*

But even where men did not absolutely enlist under the banners of any new sect, they were stimulated by the temper of their age to a more zealous and independent discussion of their religious system. A curious illustration of this is furnished by one of the letters of Innocent III. He had been informed by the Bishop of Metz, as he states to the clergy of the diocess, that no small multitude of laymen and women having procured a translation of the gospels, epistles of St. Paul, the psalter, Job, and other books of Scripture, to be made for them into French, meet in secret conventicles to hear them read, and preach to each other, avoiding the company of those who do not join in their devotion, and having been reprimanded for this by some of their parish priests, have withstood them, alleging reasons from the Scriptures why they should not be so forbidden. Some of them too deride the ignorance of their ministers, and maintain that their own books teach them more than they can learn from the pulpit, and that they can express it better. Although the desire of reading the Scriptures, Innocent proceeds, is rather praiseworthy than reprehensible, yet they are to be blamed for frequenting secret assemblies, for usurping the office of preaching, deriding their own ministers, and scorning the company of such as do not concur in their novelties. He presses the bishop and chapter to discover the author of this translation, which could not have been made without a knowledge of letters, and what were his intentions, and what degree of orthodoxy and respect for the Holy See those who used it possessed. This letter of Innocent III., however, considering the nature of the man, is sufficiently temperate and conciliatory. It seems not to have answered its end; for in another letter he complains that some members of this little association continued refractory, and refused to obey either the bishop or the pope.*

In the eighth and ninth centuries, when the Vulgate had ceased to be generally intelligible, there is no reason to suspect any intention in the church to deprive the laity of the Scriptures. Translations were freely made into the vernacular languages, and perhaps read in churches, although the acts of saints were generally deemed more instructive. Louis the Debonair is said to have caused a German version of the New Testament to be made. Otfrid, in the same century, rendered the gospels, or

* It would be difficult to specify all the dispersed authorities which attest the existence of the sects derived from the Waldenses and Paulicians in the twelfth, thirteenth, and fourteenth centuries. Besides Mosheim, who has paid considerable attention to the suoject, I would mention some articles in Du Cange which supply gleanings; namely, Beghardi, Bulgari, Lollardi, Paterini, Picardi, Piffi, Populicani.

Upon the subject of the Waldenses and Albigenses generally, I have borrowed some light from Mr. Turner's History of England, vol. iii., p. 377, 393. This learned writer has seen some books that have not fallen into my way; and I am indebted to him for a knowledge of Alanus's treatise, which I have since read. At the same time I must observe, that Mr. Turner has not perceived the essential distinction between the two leading sects.

The name of Albigenses does not frequently occur after the middle of the thirteenth century; but the Waldenses, or sects bearing that denomination, were dispersed over Europe. As a term of different reproach was derived from the word Bulgarian, so *vauderie*, or the profession of the Vaudois, was sometimes applied to witchcraft. Thus, in the proceedings of the Chambre Brulante at Arras, in 1459, against persons accused of sorcery, their crime is denominated *vauderie*. The fullest account of this remarkable story is found in the Memoirs of Du Clercq, first published in the general collection of Historical Memoirs, t. ix., p. 430, 471. It exhibits a complete parallel to the events that happened in 1682 at Salem, in New-England. A few obscure persons were accused of *vauderie*, or witchcraft. After their condemnation, which was founded on confessions obtained by torture, and afterward retracted, an epidemical contagion of superstitious dread was diffused all around. Numbers were arrested, burnt alive by order of a tribunal instituted for the detection of this offence, or detained in prison; so that no person in Arras thought himself safe. It was believed that many were accused for the sake of their possessions, which were confiscated to the use of the church. At length the Duke of Burgundy interfered, and put a stop to the persecutions. The whole narrative in Du Clercq is interesting, as a curious document of the tyranny of bigots, and of the facility with which it is turned to private ends.

To return to the Waldenses: the principal course of their emigration is said to have been into Bohemia, where, in the fifteenth century, the name was borne by one of the seceding sects. By their profession of faith, presented to Ladislaus Posthumus, it appears that they acknowledged the corporal presence in the eucharist, but rejected purgatory and other Romish doctrines. See it in the Fasciculus Rerum expetendarum et fugiendarum, a collection of treatises illustrating the origin of the Reformation, originally published at Cologne in 1535, and reprinted at London in 1690.

* Opera Innocent. III., p. 468, 537. A translation of the Bible had been made by direction of Peter Waldo; but whether this used in Lorrain was the same, does not appear. Metz was full of the Vaudois, as we find by other authorities.

rather abridged them, into German verse. This work is still extant, and is in several respects an object of curiosity.* In the eleventh or twelfth century, we find translations of the Psalms, Job, and the Maccabees into French.† But after the diffusion of heretical opinions, or, what was much the same thing, of free inquiry, it became expedient to secure the orthodox faith from lawless interpretation. Accordingly the council of Toulouse, in 1229, prohibited the laity from possessing the Scriptures; and this precaution was frequently repeated upon subsequent occasions.

The ecclesiastical history of the thirteenth or fourteenth centuries teems with new sectaries and schismatics, various in their aberrations of opinion, but all concurring in detestation of the established church.‡ They endured severe persecutions with a sincerity and firmness which in any cause ought to command respect. But in general we find an extravagant fanaticism among them; and I do not know how to look for any amelioration of society from the Franciscan seceders, who quibbled about the property of things consumed by use, or from the mystical visionaries of different appellations, whose moral practice was sometimes more than equivocal. Those who feel any curiosity about such subjects, which are by no means unimportant, as they illustrate the history of the human mind, will find them treated very fully by Mosheim. But the original sources of information are not always accessible in this country, and the research would perhaps be more fatiguing than profitable.

Lollards of England.

I shall, for an opposite reason, pass lightly over the great revolution in religious opinion wrought in England by Wicliffe, which will generally be familiar to the reader from our common historians. Nor am I concerned to treat of theological inquiries, or to write a history of the church. Considered in its effect upon manners, the sole point which these pages have in view, the preaching of this new sect certainly produced an extensive reformation. But their virtues were by no means free from some unsocial qualities, in which, as well as in their superior attributes, the Lollards bear a very close resemblance to the Puritans of Elizabeth's reign: a morosenss that proscribed all cheerful amusements, an uncharitable malignity that made no distinction in condemning the established clergy, and a narrow prejudice that applied the rules of the Jewish law to modern institutions.* Some of their principles were far more dangerous to the good order of society, and cannot justly be ascribed to the Puritans, though they grew afterward out of the same soil. Such was the notion, which is imputed also to the Albigenses, that civil magistrates lose their right to govern by committing sin, or, as it was quaintly expressed in the seventeenth century, that dominion is founded in grace. These extravagances, however, do not belong to the learned and politic Wicliffe, however they might be adopted by some of his enthusiastic disciples.† Fostered by the general ill-will towards the church his principles made vast progress in England, and, unlike those of earlier sectaries, were embraced by men of rank and civil influence. Notwithstanding the check they sustained by the sanguinary law of Henry IV., it is highly probable that multitudes secretly cherished them down to the era of the Reformation.

Hussites of Bohemia.

From England the spirit of religious innovation was propagated into Bohemia; for though John Huss was very far from embracing all the doctrinal systems of Wicliffe, it is manifest that his zeal had been quickened by the

* Schilteri Thesaurus Antiq. Teutonicorum, t. ii.

† Mém. de l'Acad. des Inscript., t. xvii., p. 720.

‡ The application of the visions of the Apocalypse to the corruptions of Rome has commonly been said to have been first made by the Franciscan seceders. But it may be traced higher, and is remarkably pointed out by Dante.

Di voi pastor s' accorse 'l Vangelista,
Quando colei, chi siede sovra l' acque,
Puttaneggiar co' regi a lui fu vista.
Inferno, cant. xix.

* Walsingham, p. 238. Lewis's Life of Peacock, p. 65. Bishop Peacock's answer to the Lollards of his time contains passages well worthy of Hooker, both for weight of matter and dignity of style, setting forth the necessity and importance of "the moral law of kinde, or moral philosophie," in opposition to those who derive all morality from revelation.

This great man fell afterward under the displeasure of the church for propositions, not indeed heretical, but repugnant to her scheme of spiritual power. He asserted indirectly the right of private judgment, and wrote on theological subjects in English, which gave much offence. In fact, Peacock seems to have hoped that his acute reasoning would convince the people, without requiring an implicit faith. But he greatly misunderstood the principle of an infallible church. Lewis's Life of Peacock does justice to his character which, I need not say, is unfairly represented by such historians as Collier, and such antiquaries as Thomas Hearne.

† Lewis's Life of Wicliffe, p. 115. Lenfant Hist. du Concile de Constance, t. i., p. 21?

writings of that reformer.* Inferior to the Englishman in ability, but exciting greater attention by his constancy and sufferings, as well as by the memorable war which his ashes kindled, the Bohemian martyr was even more eminently the precursor of the Reformation. But still regarding these dissensions merely in a temporal light, I cannot assign any beneficial effect to the schism of the Hussites, at least in its immediate results, and in the country where it appeared. Though some degree of sympathy with their cause is inspired by resentment at the ill faith of their adversaries, and by the associations of civil and religious liberty, we cannot estimate the Taborites and other sectaries of that description but as ferocious and desperate fanatics.† Perhaps beyond the confines of Bohemia, more substantial good may have been produced by the influence of its reformation, and a better tone of morals inspired into Germany. But I must again repeat, that upon this obscure and ambiguous subject I assert nothing definitely, and little with confidence. The tendencies of religious dissent in the four ages before the Reformation appear to have generally conduced towards the moral improvement of mankind; and facts of this nature occupy a far greater space in a philosophical view of society during that period than we might at first imagine; but every one who is disposed to prosecute this inquiry will assign their character according to the result of his own investigations.

But the best school of moral discipline which the middle ages afforded was the institution of chivalry. There is something perhaps to allow for the partiality of modern writers upon this interesting subject; yet our most skeptical criticism must assign a decisive influence to this great source of human improvement. The more deeply it is considered, the more we shall become sensible of its importance.

Institution of chivalry.

There are, if I may so say, three powerful spirits, which have from time to time moved over the face of the waters, and given a predominant impulse to the moral sentiments and energies of mankind. These are the spirits of liberty, of religion, and of honour. It was the principal business of chivalry to animate and cherish the last of these three. And whatever high magnanimous energy the love of liberty or religious zeal has ever imparted, was equalled by the exquisite sense of honour which this institution preserved.

It appears probable, that the custom of receiving arms at the age of manhood with some solemnity, was of immemorial antiquity among the nations that overthrew the Roman empire. For it is mentioned by Tacitus to have prevailed among their German ancestors; and his expressions might have been used with no great variation to describe the actual ceremonies of knighthood.* There was even in that remote age a sort of public trial as to the fitness of the candidate, which, though perhaps confined to his bodily strength and activity, might be the germe of that refined investigation which was thought necessary in the perfect stage of chivalry. Proofs though rare and incidental, might be adduced to show, that in the time of Charlemagne, and even earlier, the sons of monarchs at least did not assume manly arms without a regular investiture. And in the eleventh century, it is evident that this was a general practice.†

Its origin

This ceremony, however, would perhaps of itself have done little towards forming that intrinsic principle which characterized the genuine chivalry. But in the reign of Charlemagne we find a military distinction, that appears, in fact as well as in name, to have given birth to that institution. Certain feudal tenants, and I suppose also allodial proprietors, were bound to serve on horseback, equipped with the coat of mail. These were called Caballarii, from which the word chevaliers is an obvious corrup-

* Huss does not appear to have rejected any of the peculiar tenets of popery.—Lenfant, p. 414. He embraced, like Wicliffe, the predestinarian system of Augustin, without pausing at any of those inferences, apparently deducible from it, which, in the heads of enthusiasts, may produce such extensive mischief. These were maintained by Huss (id., p. 328), though not perhaps so crudely as by Luther. Every thing relative to the history and doctrine of Huss and his followers will be found in Lenfant's three works, on the councils of Pisa, Constance, and Basle.

† Lenfant, Hist. de la Guerre des Hussites et du Concile de Basle.—Schmidt, Hist. des Allemands,

* Nihil neque publicæ neque privatæ rei nisi armati agunt. Sed arma sumere non ante cuiquam moris, quàm civitas suffecturum probaverit. Tum in ipso concilio, vel principum aliquis, vel pater, vel propinquus scuto framcâque juvenem ornant: hæc apud eos toga, hic primus juventæ honos; ante hoc domûs pars videntur, mox reipublicæ.—De Moribus German., c. 13.

† William of Malmsbury says that Alfred conferred knighthood on Athelstan, donatum chlamyde coccineâ, gemmato balteo, ense Saxonico cum vaginâ aureâ, l. ii., c. 6. St. Palaye (Mémoires sur la Chevalerie, p. 2) mentions other instances which may also be found in Du Cange's Glossary v. Arma, and in his 22d dissertation on Joinville.

tion.* But he who fought on horseback, and had been invested with peculiar arms in a solemn manner, wanted nothing more to render him a knight. Chivalry therefore may, in a general sense, be referred to the age of Charlemagne. We may however go farther, and observe that these distinctive advantages above ordinary combatants were probably the sources of that remarkable valour and that keen thirst for glory which became the essential attributes of a knightly character. For confidence in our skill and strength is the usual foundation of courage: it is by feeling ourselves able to surmount common dangers, that we become adventurous enough to encounter those of a more extraordinary nature, and to which more glory is attached. The reputation of superior personal prowess, so difficult to be attained in the course of modern warfare, and so liable to erroneous representations, was always within the reach of the stoutest knight, and was founded on claims which could be measured with much accuracy. Such is the subordination and mutual dependance in a modern army, that every man must be content to divide his glory with his comrades, his general, or his soldiers. But the soul of chivalry was individual honour, coveted in so entire and absolute a perfection, that it must not be shared with an army or a nation. Most of the virtues it inspired were what we may call independent, as opposed to those which are founded upon social relations. The knights-errant of romance perform their best exploits from the love of renown, or from a sort of abstract sense of justice, rather than from any solicitude to promote the happiness of mankind. If these springs of action are less generally beneficial, they are, however, more connected with elevation of character than the systematic prudence of men accustomed to social life. This solitary and independent spirit of chivalry, dwelling, as it were, upon a rock, and disdaining injustice or falsehood from the consciousness of internal dignity, without any calculation of their consequences, is not unlike what we sometimes read of Arabian chiefs or the North American Indians.† These nations, so widely remote from each other seem to partake of that moral energy which, among European nations, far remote from both of them, was excited by the spirit of chivalry. But the most beautiful picture that was ever portrayed of this character is the Achilles of Homer, the representative of chivalry in its most general form, with all its sincerity and unyielding rectitude, all its courtesies and munificence. Calmly indifferent to the cause in which he is engaged, and contemplating with a serious and unshaken look the premature death that awaits him, his heart only beats for glory and friendship. To this sublime character, bating that imaginary completion by which the creations of the poet, like those of the sculptor, transcend all single works of nature, there were probably many parallels in the ages of chivalry, especially before a set education and the refinements of society had altered a little the natural unadulterated warrior of a rude period. One illustrious example from this earlier age is the Cid Ruy Diaz, whose history has fortunately been preserved much at length in several chronicles of ancient date, and in one valuable poem; and though I will not say that the Spanish hero is altogether a counterpart of Achilles in gracefulness and urbanity, yet was he inferior to none that ever lived in frankness, honour, and magnanimity.*

* Comites et vassalli nostri qui beneficia habere noscuntur, et *caballarii* omnes ad placitum nostrum veniant bene preparati.—Capitularia, A. D. 807, in Baluze, t. i., p. 460.

† We must take for this the more favourable representations of the Indian nations. A deteriorating intercourse with Europeans, or a race of European extraction, has tended to efface those virtues, which possibly were rather exaggerated by earlier writers.

* Since this passage was written, I have found a parallel drawn by Mr. Sharon Turner, in his valuable History of England, between Achilles and Richard Cœur de Lion; the superior justness of which I readily acknowledge. The real hero does not indeed excite so much interest in me as the poetical; but the marks of resemblance are very striking, whether we consider their passions, their talents, their virtues, their vices, or the waste of their heroism.

The two principal persons in the Iliad, if I may digress into the observation, appear to me representatives of the heroic character in its two leading varieties; of the energy which has its sole principle of action within itself, and of that which borrows its impulse from external relations; of the spirit of honour, in short, and of patriotism. As every sentiment of Achilles is independent and self-supported, so those of Hector all bear reference to his kindred and his country. The ardour of the one might have been extinguished for want of nourishment in Thessaly; but that of the other might, we fancy, have never been kindled but for the dangers of Troy. Peace could have brought no delight to the one but from the memory of war; war had no alleviation to the other but from the images of peace. Compare, for example, the two speeches, beginning Il. Z., 441, and Il. Π., 49; or rather compare the two characters throughout the Iliad. So wonderfully were those two great springs of human sympathy, variously interesting accord

Its connexion with feudal service

In the first state of chivalry, it was closely connected with the military service of fiefs. The Caballarii in the Capitularies, the Milites of the eleventh and twelfth centuries, were landholders who followed their lord or sovereign into the field. A certain value of land was termed in England a knight's fee, or, in Normandy, feudum loricæ, fief de haubert, from the coat of mail which it entitled and required the tenant to wear; a military tenure was said to be by service in chivalry. To serve as knights, mounted and equipped, was the common duty of vassals; it implied no personal merit, it gave of itself a claim to no civil privileges. But this knight-service, founded upon a feudal obligation, is to be carefully distinguished from that superior chivalry, in which all was independent and voluntary. The latter, in fact, could hardly flourish in its full perfection till the military service of feudal tenure began to decline; namely, in the thirteenth century. The origin of this personal chivalry I should incline to refer to the ancient usage of voluntary commendation, which I have mentioned in a former chapter. Men commended themselves, that is, did homage and professed attachment to a prince or lord; generally indeed for protection or the hope of reward, but sometimes probably for the sake of distinguishing themselves in his quarrels. When they received pay, which must have been the usual case, they were literally his soldiers or stipendiary troops. Those who could afford to exert their valour without recompense were like the knights of whom we read in romance, who served a foreign master through love, or thirst of glory, or gratitude. The extreme poverty of the lower nobility, arising from the subdivision of fiefs, and the politic generosity of rich lords, made this connexion as strong as that of territorial dependance. A younger brother, leaving the paternal estate, in which he took a slender share, might look to wealth and dignity in the service of a powerful count. Knighthood, which he could not claim as his legal right, became the object of his chief ambition. It raised him in the scale of society, equalling him in dress, in arms, and in title, to the rich landholders. As it was due to his merit, it did much more than equal him to those who had no pretensions but from wealth; and the territorial knights became by degrees ashamed of assuming the title till they could challenge it by real desert.

This connexion broken.

This class of noble and gallant cavaliers, serving commonly for pay, but on the most honourable footing, became far more numerous through the crusades; a great epoch in the history of European society. In these wars, as all feudal service was out of the question, it was necessary for the richer barons to take into their pay as many knights as they could afford to maintain: speculating, so far as such motives operated, on an influence with the leaders of the expedition, and on a share of plunder proportioned to the number of their followers. During the period of the crusades, we find the institution of chivalry acquire its full vigour as an order of personal nobility; and its original connexion with feudal tenure, if not altogether effaced, became in a great measure forgotten in the splendour and dignity of the new form which it wore.

Effect of the crusades on chivalry

The crusaders, however, changed in more than one respect the character of chivalry. Before that epoch it appears to have had no particular reference to religion. Ingulfus indeed tells us that the Anglo-Saxons preceded the ceremony of investiture by a confession of their sins, and other pious rites, and they received the order at the hands of a priest instead of a knight. But this was derided by the Normans as effeminacy, and seems to have proceeded from the extreme devotion of the English before the conquest.* We can hardly perceive, indeed, why the assumption of arms to be used in butchering mankind should be treated as a religious ceremony. The clergy, to do them justice, constantly opposed the private wars in which the courage of those ages wasted itself; and all bloodshed was subject in strictness to a canonical penance. But the purposes for which men bore arms in a crusade so sanctified their use, that chivalry acquired the character as much of a religious as a military institution. For many centuries, the recovery of the Holy Land was constantly at the heart of a brave and superstitious nobility; and every knight

Chivalry connected with religion,

ing to the diversity of our tempers, first touched by that ancient patriarch,

à quo, ceu fonte perenni,
Vatum Pieriis ora rigantur aquis.

* Ingulfus in Gale, xv. Scriptores, t. i., p. 70. William Rufus, however, was knighted by Archbishop Lanfranc, which looks as if the ceremony was not absolutely repugnant to the Norman practice.

was supposed at his creation to pledge himself, as occasion should arise, to that cause. Meanwhile, the defence of God's law against infidels was his primary and standing duty. A knight, whenever present at mass, held the point of his sword before him while the gospel was read, to signify his readiness to support it. Writers of the middle ages compare the knightly to the priestly character in an elaborate parallel, and the investiture of the one was supposed analogous to the ordination of the other. The ceremonies upon this occasion were almost wholly religious. The candidate passed nights in prayer among priests in a church; he received the sacraments; he entered into a bath, and was clad with a white robe, in allusion to the presumed purification of his life; his sword was solemnly blessed; every thing, in short, was contrived to identify his new condition with the defence of religion, or at least of the church.*

And with gallantry.

To this strong tincture of religion, which entered into the composition of chivalry from the twelfth century, was added another ingredient equally distinguishing. A great respect for the female sex had always been a remarkable characteristic of the Northern nations. The German women were high spirited and virtuous; qualities which might be causes or consequences of the veneration with which they were regarded. I am not sure that we could trace very minutely the condition of women for the period between the subversion of the Roman empire and the first crusade; but apparently man did not grossly abuse his superiority; and in point of civil rights, and even as to the inheritance of property, the two sexes were placed perhaps as nearly on a level as the nature of such warlike societies would admit. There seems, however, to have been more roughness in the social intercourse between the sexes than we find in later periods. The spirit of gallantry, which became so animating a principle of chivalry, must be ascribed to the progressive refinement of society during the twelfth and two succeeding centuries. In a rude state of manners, as among the lower people in all ages, woman has not full scope to display those fascinating graces, by which nature has designed to counterbalance the strength and energy of mankind. Even where those jealous customs that degrade alike the two sexes have not prevailed, her lot is domestic seclusion; nor is she fit to share in the boisterous pastimes of drunken merriment, to which the intercourse of an unpolished people is confined. But as a taste for the more elegant enjoyments of wealth arises, a taste which it is always her policy and her delight to nourish, she obtains an ascendency at first in the lighter hour, and from thence in the serious occupations of life. She chases or brings into subjection the god of wine, a victory which might seem more ignoble were it less difficult, and calls in the aid of divinities more propitious to her ambition. The love of becoming ornament is not perhaps to be regarded in the light of vanity; it is rather an instinct which woman has received from nature to give effect to those charms that are her defence; and when commerce began to minister more effectually to the wants of luxury, the rich furs of the North, the gay silks of Asia, the wrought gold of domestic manufacture, illumined the halls of chivalry, and cast, as if by the spell of enchantment, that ineffable grace over beauty which the choice and arrangement of dress are calculated to bestow. Courtesy had always been the proper attribute of knighthood protection of the weak its legitimate duty but these were heightened to a pitch of enthusiasm when woman became their object. There was little jealousy shown in the treatment of that sex, at least in France, the fountain of chivalry; they were present at festivals, at tournaments and sat promiscuously in the halls of their castle. The romance of Perceforest (and romances have always been deemed good witnesses as to manners) tells of a feast where eight hundred knights had each of them a lady eating off his plate.* For to eat off the same plate was a usual mark of gallantry or friendship.

Next therefore, or even equal to devotion, stood gallantry among the principles of knighthood. But all comparison between the two was saved by blending them together. The love of God and the ladies was enjoined as a single duty. He who was faithful and true to his mis-

* Du Cange, v. Miles, and 22d Dissertation on Joinville. St. Palaye, Mém sur la Chevalerie, part ii. A curious original illustration of this, as well as of other chivalrous principles, will be found in l'Ordene de Chevalerie, a long metrical romance published in Barbazan's Fabliaux, t. i., p. 59 (edit. 1808).

* Y eut huit cens chevaliers séant à table; et si n'y eust celui qui n'eust une dame ou une pucelle à son ecuelle. In Lancelot du Lac, a lady who was troubled with a jealous husband complains that it was a long time since a knight had eaten off her plate.—Le Grand, t. i., p. 24.

tress was held sure of salvation in the theology of castles, though not of cloisters.* Froissart announces that he had undertaken a collection of amorous poetry with the help of God and of love; and Boccace returns thanks to each for their assistance in the Decameron. The laws sometimes united in this general homage to the fair. We will, says James II. of Aragon, that every man, whether knight or no, who shall be in company with a lady, pass safe and unmolested, unless he be guilty of murder.† Louis II. duke of Bourbon, instituting the order of the Golden Shield, enjoins his knights to honour above all the ladies, and not to permit any one to slander them, "because from them, after God, comes all the honour that men can acquire."‡

The gallantry of those ages, which was very often adulterous, had certainly no right to profane the name of religion; but its union with valour was at least more natural, and became so intimate, that the same word has served to express both qualities. In the French and English wars especially, the knights of each country brought to that serious conflict the spirit of romantic attachment which had been cherished in the hours of peace. They fought at Poitiers or Verneuil as they had fought at tournaments, bearing over their armour scarves and devices, as the livery of their mistresses, and asserting the paramount beauty of her they served, in vaunting challenges towards the enemy. Thus, in the middle of a keen skirmish at Cherbourg, the squadrons remained motionless, while one knight challenged to a single combat the most amorous of the adversaries. Such a defiance was soon accepted; and the battle only recommenced when one of the champions had lost his life for his love.§ In the first campaign of Edward's war, some young English knights wore a covering over one eye, vowing, for the sake of their ladies, never to see with both till they should have signalized their prowess in the field.‖ These extravagances of chivalry are so common that they form part of its general character, and prove how far a course of action which depends upon the impulses of sentiment may come to deviate from common sense.

It cannot be presumed that this enthusiastic veneration, this devotedness in life and death, were wasted upon ungrateful natures. The goddesses of that idolatry knew too well the value of their worshippers. There has seldom been such adamant about the female heart as can resist the highest renown for valour and courtesy, united with the steadiest fidelity. "He loved (says Froissart of Eustace d'Auberthicourt), and afterward married Lady Isabel, daughter of the Count of Juliers. This lady, too, loved Lord Eustace for the great exploits in arms which she heard told of him, and she sent him horses and loving letters, which made the said Lord Eustace more bold than before, and he wrought such feats of chivalry that all in his company were gainers."* It were to be wished that the sympathy of love and valour had always been as honourable. But the morals of chivalry, we cannot deny, were not pure. In the amusing fictions which seem to have been the only popular reading of the middle ages, there reigns a licentious spirit, not of that slighter kind which is usual in such compositions, but indicating a general dissoluteness in the intercourse of the sexes. This has often been noticed of Boccaccio and the early Italian novelists; but it equally characterized the tales and romances of France, whether metrical or in prose, and all the poetry of the Troubadours.† The violation of marriage-vows passes in them for an incontestable privilege of the brave and the fair; and an accomplished knight seems to have enjoyed as undoubted prerogatives, by general consent of opinion, as were claimed by the brilliant courtiers of Louis XV.

But neither that emulous valour which chivalry excited, nor the religion and gallantry which were its animating principles, alloyed as the latter were by the corruption of those ages, could have rendered its institution materially conducive to the moral improvement of society There were, however, excellences of a very high class which it equally encouraged. In the books professedly written to lay down the duties of knighthood, they appear to spread over the whole compass

* Le Grand, Fabliaux, t. iii., p. 438. St. Palaye, t. i., p. 41. I quote St. Palaye's Memoirs from the first edition in 1759, which is not the best.

† Statuimus, quod omnis homo, sive miles sive rus, qui iverit cum dominâ generosâ, salvus sit atque securus, nisi fuerit homicida.—De Marca, Marca Hispanica, p. 1428.

‡ Le Grand, t. i., p. 120. St. Palaye, t. i., p. 13, 34, 221. Fabliaux, Romances, &c., passim.

§ St. Palaye, p 222 ‖ Froissart, p. 33.

* St. Palaye, p. 268.

† The romances will speak for themselves; and the character of the Provençal morality may be collected from Millot, Hist. des Troubadours, passim; and from Sismondi, Littérature du Midi, t. i. p. 179, &c. See too St. Palaye, t. ii., p. 62 and 68

of human obligations. But these, like other books of morality, strain their schemes of perfection far beyond the actual pracuce of mankind. A juster estimate of chivalrous manners is to be deduced from romances. Yet in these, as in all similar fictions, there must be a few ideal touches beyond the simple truth of character; and the picture can only be interesting when it ceases to present images of mediocrity or striking imperfection. But they referred their models of fictitious heroism to the existing standard of moral approbation; a rule which, if it generally falls short of what reason and religion prescribe, is always beyond the average tenour of human conduct. From these and from history itself we may infer the tendency of chivalry to elevate and purify the moral feelings. Three virtues may particularly be noticed, as essential, in the estimation of mankind, to the character of a knight; loyalty, courtesy, and munificence.

Virtues deemed essential to chivalry.

The first of these, in its original sense, may be defined, fidelity to engagements; whether actual promises, or such tacit obligations as bound a vassal to his lord, and a subject to his prince. It was applied also, and in the utmost strictness, to the fidelity of a lover towards the lady he served. Breach of faith, and especially of an express promise, was held a disgrace that no valour could redeem. False, perjured, disloyal, recreant, were the epithets which he must be compelled to endure who had swerved from a plighted engagement, even towards an enemy. This is one of the most striking changes produced by chivalry. Treachery, the usual vice of savage as well as corrupt nations, became infamous during the vigour of that discipline. As personal rather than national feelings actuated its heroes, they never felt that hatred, much less that fear of their enemies, which blind men to the heinousness of ill faith. In the wars of Edward III., originating in no real animosity, the spirit of honourable as well as courteous behaviour towards the foe seems to have arrived at its highest point. Though avarice may have been the primary motive of ransoming prisoners, instead of putting them to death, their permission to return home on the word of honour, in order to procure the stipulated sum, an indulgence never refused, could only be founded on experienced confidence in the principles of chivalry.*

Loyalty.

* St. Palaye, part ii.

A knight was unfit to remain a member of the order if he violated his faith; he was ill acquainted with its duties if he proved wanting in courtesy. This word expressed the most highly refined good-breeding, founded less upon a knowledge of ceremonious politeness, though this was not to be omitted, than on the spontaneous modesty, self-denial, and respect for others, which ought to spring from his heart. Besides the grace which this beautiful virtue threw over the habits of social life, it softened down the natural roughness of war, and gradually introduced that indulgent treatment of prisoners which was almost unknown to antiquity. Instances of this kind are continual in the later period of the middle ages. An Italian writer blames the soldier who wounded Eccelin, the famous tyrant of Padua, after he was taken. He deserved, says he, no praise, but rather the greatest infamy for his baseness; since it is as vile an act to wound a prisoner, whether noble or otherwise, as to strike a dead body.* Considering the crimes of Eccelin, this sentiment is a remarkable proof of generosity. The behaviour of Edward III. to Eustace de Ribaumont, after the capture of Calais, and that, still more exquisitely beautiful, of the Black Prince to his royal prisoner at Poitiers, are such eminent instances of chivalrous virtue, that I omit to repeat them only because they are so well known. Those great princes, too, might be imagined to have soared far above the ordinary track of mankind. But, in truth, the knights who surrounded them and imitated their excellences were only inferior in opportunities of displaying the same virtue. After the battle of Poitiers, "the English and Gascon knights," says Froissart, "having entertained their prisoners, went home each of them with the knights or squires he had taken, whom he then questioned upon their honour, what ransom they could pay without inconvenience, and easily gave them credit; and it was common for men to say that they would not straighten any knight or squire, so that he should not live well and keep up his honour."† Liberality indeed, and

Courtesy.

* Non laudem meruit, sed summæ potius opprobrium vilitatis; nam idem facimus est putandum captum nobilem vel ignobilem offendere, vel ferire, quàm gladio cædere cadaver.—Rolandinus in Script. Rer. Ital., t. viii., p. 351.

† Froissart, l. i., c. 161. He remarks in another place, that all English and French gentlemen treat their prisoners well; not so the Germans, who put them in fetters, in order to extort more money

Liberality. disdain of money, might be reckoned, as I have said, among the essential virtues of chivalry. All the romances inculcate the duty of scattering their wealth with profusion, especially towards minstrels, pilgrims, and the poorer members of their own order. The last, who were pretty numerous, had a constant right to succour from the opulent; the castle of every lord, who respected the ties of knighthood, was open with more than usual hospitality to the traveller whose armour announced his dignity, though it might also conceal his poverty.*

Justice. Valour, loyalty, courtesy, munificence, formed collectively the character of an accomplished knight, so far as was displayed in the ordinary tenour of his life, reflecting these virtues as an unsullied mirror. Yet something more was required for the perfect idea of chivalry, and enjoined by its principles; an active sense of justice, an ardent indignation against wrong, a determination of courage to its best end, the prevention or redress of injury. It grew up as a salutary antidote in the midst of poisons, while scarce any law but that of the strongest obtained regard, and the rights of territorial property, which are only right as they conduce to general good, became the means of general oppression. The real condition of society, it has sometimes been thought, might suggest stories of knight-errantry, which were wrought up into the popular romances of the middle ages. A baron, abusing the advantage of an inaccessible castle in the fastnesses of the Black Forest or the Alps, to pillage the neighbourhood, and confine travellers in his dungeon, though neither a giant nor a Saracen, was a monster not less formidable, and could perhaps as little be destroyed without the aid of disinterested bravery. Knight-errantry, indeed, as a profession, cannot rationally be conceived to have had any existence beyond the precincts of romance. Yet there seems no improbability in supposing that a knight, journeying through uncivilized regions in his way to the Holy Land or to the court of a foreign sovereign, might find himself engaged in adventures not very dissimilar to those which are the theme of romance. We cannot indeed expect to find any historical evidence of such incidents.

Resemblance of chivalrous to eastern manners. The characteristic virtues of chivalry bear so much resemblance to those which eastern writers of the same period extol, that I am a little disposed to suspect Europe of having derived some improvement from imitation of Asia. Though the crusades began in abhorrence of infidels, this sentiment wore off in some degree before their cessation; and the regular intercourse of commerce, sometimes of alliance, between the Christians of Palestine and the Saracens, must have removed part of the prejudice, while experience of their enemy's courage and generosity in war would with those gallant knights serve to lighten the remainder. The romancers expatiate with pleasure on the merits of Saladin, who actually received the honour of knighthood from Hugh of Tabaria his prisoner. An ancient poem, entitled the Order of Chivalry, is founded upon this story, and contains a circumstantial account of the ceremonies, as well as duties, which the institution required.* One or two other instances of a similar kind bear witness to the veneration in which the name of knight was held among the eastern nations. And certainly, excepting that romantic gallantry towards women, which their customs would not admit, the Mahometan chieftains were for the most part abundantly qualified to fulfil the duties of European chivalry. Their manners had been polished and courteous, while the western kingdoms were comparatively barbarous.

Evils produced by the spirit of chivalry. The principles of chivalry were not, I think, naturally productive of many evils. For it is unjust to class those acts of oppression or disorder among the abuses of knighthood, which were committed in spite of its regulations, and were only prevented by them from becoming more extensive. The license of times so imperfectly civilized could not be expected to yield to institutions which, like those of religion, fell prodigiously short in their practical result of the reformation which they were designed to work. Man's guilt and frailty have never admitted more than a partial corrective. But some bad consequences may be more fairly ascribed to the very nature of chivalry. I have already mentioned the dissolute-

* St. Palaye, part iv., p. 312, 367, &c. Le Grand, Fabliaux, t. i., p. 115, 167. It was the custom in Great Britain (says the romance of Perceforest, speaking of course in an imaginary history), that noblemen and ladies placed a helmet on the highest point of their castles, as a sign that all persons of such rank travelling that road might boldly enter their houses like their own.—St. Palaye, p. 367.

* Fabliaux de Barbazan, t

ness which almost unavoidably resulted from the prevailing tone of gallantry. And yet we sometimes find, in the writings of those times, a spirit of pure but exaggerated sentiment; and the most fanciful refinements of passion are mingled by the same poets with the coarsest immorality. An undue thirst for military renown was another fault that chivalry must have nourished; and the love of war, sufficiently pernicious in any shape, was more founded, as I have observed, on personal feelings of honour, and less on public spirit, than in the citizens of free states. A third reproach may be made to the character of knighthood, that it widened the separation between the different classes of society, and confirmed that aristocratical spirit of high birth, by which the large mass of mankind were kept in unjust degradation. Compare the generosity of Edward III. towards Eustace de Ribaumont at the siege of Calais, with the harshness of his conduct towards the citizens. This may be illustrated by a story from Joinville, who was himself imbued with the full spirit of chivalry, and felt like the best and bravest of his age. He is speaking of Henry, count of Champagne, who acquired, says he, very deservedly, the surname of Liberal, and adduces the following proof of it. A poor knight implored of him on his knees one day as much money as would serve to marry his two daughters. One Arthault de Nogent, a rich burgess, willing to rid the count of this importunity, but rather awkward, we must own, in the turn of his argument, said to the petitioner, My lord has already given away so much that he has nothing left. Sir Villain, replied Henry, turning round to him, you do not speak truth in saying that I have nothing left to give when I have got yourself. Here, Sir Knight, I give you this man, and warrant your possession of him. Then, says Joinville, the poor knight was not at all confounded, but seized hold of the burgess fast by the collar, and told him he should not go till he had ransomed himself. And in the end he was forced to pay a ransom of five hundred pounds. The simple-minded writer who brings this evidence of the Count of Champagne's liberality is not at all struck with the facility of a virtue that is exercised at the cost of others.*

Circumstances tending to promote it.

There is perhaps enough in the nature of this institution, and its congeniality to the habits of a warlike generation, to account for the respect in which it was held throughout Europe. But several collateral circumstances served to invigorate its spirit. Besides the powerful efficacy with which the poetry and romance of the middle ages stimulated those susceptible minds which were alive to no other literature, we may enumerate four distinct causes tending to the promotion of chivalry.

Regular education for knighthood

The first of these was the regular scheme of education, according to which the sons of gentlemen, from the age of seven years, were brought up in the castles of superior lords, where they at once learned the whole discipline of their future profession, and imbibed its emulous and enthusiastic spirit. This was an inestimable advantage to the poorer nobility, who could hardly otherwise have given their children the accomplishments of their station. From seven to fourteen these boys were called pages or varlets; at fourteen they bore the name of esquire. They were instructed in the management of arms, in the art of horsemanship, in exercises of strength and activity. They became accustomed to obedience and courteous demeanour, serving their lord or lady in offices which had not yet become derogatory to honourable birth, and striving to please visiters, and especially ladies, at the ball or banquet. Thus placed in the centre of all that could awaken their imaginations, the creed of chivalrous gallantry, superstition, or honour, must have made indelible impressions. Panting for the glory which neither their strength nor the established rules permitted them to anticipate, the young scions of chivalry attended their masters to the tournament, and even to the battle, and riveted with a sigh the armour they were forbidden to wear.*

Encouragement of princes. Tournaments.

It was the constant policy of sovereigns to encourage this institution, which furnished them with faithful supports, and counteracted the independent spirit of feudal tenure. Hence they displayed a lavish magnificence in festivals and tournaments, which may be reckoned a second means of keeping up the tone of chivalrous feeling. The kings of France and England held solemn or plenary courts at the great festivals, or at other times, where the name of knight was always a title to admittance; and the masque of chivalry, if I may use the expression, was acted in pageants and cer

* Joinville in Collection des Mémoires, t. i., p. 43.

* St. Palaye, part i.

emonies, fantastical enough in our apprehension, but well calculated for those heated understandings. Here the peacock and the pheasant birds of high fame in romance, received the homage of all true knights.* The most singular festival of this kind was that celebrated by Philip, duke of Burgundy, in 1453. In the midst of the banquet a pageant was introduced, representing the calamitous state of religion in consequence of the recent capture of Constantinople. This was followed by the appearance of a pheasant, which was laid before the duke, and to which the knights present addressed their vows to undertake a crusade, in the following very characteristic preamble: I swear before God my creator in the first place, and the glorious Virgin his mother, and next before the ladies and the pheasant.† Tournaments were a still more powerful incentive to emulation. These may be considered to have arisen about the middle of the eleventh century; for though every martial people have found diversion in representing the image of war, yet the name of tournaments, and the laws that regulated them, cannot be traced any higher.‡ Every scenic performance of modern times must be tame in comparison of these animating combats. At a tournament, the space enclosed within the lists was surrounded by sovereign princes and their noblest barons, by knights of established renown, and all that rank and beauty had most distinguished among the fair. Covered with steel, and known only by their emblazoned shield, or by the favours of their mistresses, a still prouder bearing, the combatants rushed forward to a strife without enmity, but not without danger. Though their weapons were pointless, and sometimes only of wood, though they were bound by the laws of tournaments to strike only upon the strong armour of the trunk, or, as it was called, between the four limbs, those impetuous conflicts often terminated in wounds and death. The church uttered her excommunications in vain against so wanton an exposure to peril; but it was more easy for her to excite than to restrain that martial enthusiasm. Victory in a tournament was little less glorious, and perhaps at the moment more exquisitely felt, than in the field; since no battle could assemble such witnesses of valour. "Honour to the sons of the brave" resounded amid the din of martial music from the lips of the minstrels, as the conqueror advanced to receive the prize from his queen or his mistress; while the surrounding multitude acknowledged in his prowess of that day an augury of triumphs that might in more serious contests be blended with those of his country.*

Privileges of knighthood.

Both honorary and substantial privileges belonged to the condition of knighthood, and had of course a material tendency to preserve its credit. A knight was distinguished abroad by his crested helmet, his weighty armour whether of mail or plate, bearing his heraldic coat, by his gilded spurs, his horse barded with iron or clothed in housing of gold; at home by richer silks and more costly furs than were permitted to squires, and by the appropriated colour of scarlet. He was addressed by titles of more respect.† Many civil offices, by rule of usage, were confined to his order. But perhaps its chief privilege was to form one distinct class of nobility, extending itself throughout great part of Europe, and almost independent as to its rights and dignities, of any particular sovereign. Whoever had been legitimately dubbed a knight in one country, became, as it were, a citizen of universal chivalry, and might assume most of its privileges in any other. Nor did he require the act of a sovereign to be thus distinguished. It was a fundamental principle that any knight might confer the order; responsible only in his own reputation if he used lightly so high a prerogative. But as all the distinctions of rank might have been confounded if this right had been without limit, it was an equally fundamental rule, that it could only be exercised in favour of gentlemen.‡

* Du Cange, 5me Dissertation sur Joinville. St. Palaye, t. i., p. 87, 118. Le Grand, t. i., p. 14.

† St. Palaye, t. i., p. 191.

‡ Godfrey de Preuilly, a French knight, is said by several contemporary writers to have invented tournaments; which must of course be understood in a limited sense. The Germans ascribe them to Henry the Fowler; but this, according to Du Cange, is on no authority.—6me Dissertation sur Joinville.

* St. Palaye, part ii. and part iii. au commencement. Du Cange, Dissert. 6 and 7: and Glossary, v. Torneamentum. Le Grand, Fabliaux, t. i., p. 184.

† St. Palaye, part iv. Selden's Titles of Honour, p. 806. There was not however, so much distinction in England as in France.

‡ St. Palaye, vol. i., p. 70, has forgotten to make this distinction. It is, however, capable of abundant proof. Gunther, in his poem called Ligurinus, observes of the Milanese republic:

Quoslibet ex humili vulgo, quod Gallia fœdum
Judicat, accingi gladio concedit equestri.

Otho of Frisingen expresses the same in prose. It is said, in the Establishments of St. Louis, that

The privileges annexed to chivalry were of peculiar advantage to the vavassors, or inferior gentry, as they tended to counterbalance the influence which territorial wealth threw into the scale of their feudal suzerains. Knighthood brought these two classes nearly to a level; and it is owing perhaps in no small degree to this institution, that the lower nobility saved themselves, notwithstanding their poverty, from being confounded with the common people.

Lastly, the customs of chivalry were maintained by their connexion with military service. After armies which we may call comparatively regular, had superseded in a great degree the feudal militia, princes were anxious to bid high for the service of knights, the best equipped and bravest warriors of the time, on whose prowess the fate of battles was for a long period justly supposed to depend. War brought into relief the generous virtues of chivalry, and gave lustre to its distinctive privileges. The rank was sought with enthusiastic emulation, through heroic achievements, to which, rather than to mere wealth and station, it was considered to belong. In the wars of France and England, by far the most splendid period of this institution, a promotion of knights followed every success, besides the innumerable cases where the same honour rewarded individual bravery.* It may here be mentioned, that an honorary distinction was made between knights-bannerets and bachelors.† The former were the richest and best accompanied. No man could properly be a banneret unless he possessed a certain estate, and could bring a certain number of lances into the field.‡ His distinguishing mark was the square banner, carried by a squire at the point of his lance; while the knight bachelor had only the coronet or pointed pendant When a banneret was created, the general cut off this pendant to render it square.§ But this distinction, however it

Connexion with military service of chivalry

Knights-bannerets and bachelors.

any one not being a gentleman on the father's side was knighted, the king or baron in whose territory he resides may hack off his spurs on a dunghill, c. 130. The Count de Nevers, having knighted a person who was not noble ex parte paterna, was fined in the king's court. The king, however (Philip III.), confirmed the knighthood.—Daniel, Hist. de la Milice Françoise, p. 98. Fuit propositum (says a passage quoted by Daniel) contra comitem Flandriensem, quod non poterat, nec debebat facere de villano militem, sine auctoritate regis, ibid. Statuimus, says James I. of Aragon, in 1234, ut nullus faciat militem nisi filium militis.—Marca Hispanica, p. 1428. Selden, Titles of Honour, p. 592, produces other evidence to the same effect. And the Emperor Sigismund, having conferred knighthood, during his stay at Paris in 1415, on a person incompetent to receive it for want of nobility, the French were indignant at his conduct, as an assumption of sovereignty.—Villaret, t. xiii., p. 397. We are told, however, by Giannone, l. xx., c. 3, that nobility was not in fact required for receiving chivalry at Naples, though it was in France.

The privilege of every knight to associate qualified persons to the order at his pleasure, lasted very long in France; certainly down to the English wars of Charles VII (Monstrelet, part ii., folio 50), and, if I am not mistaken, down to the time of Francis I. But in England, where the spirit of independence did not prevail so much among the nobility, it soon ceased. Selden mentions one remarkable instance in a writ of the 29th year of Henry III, summoning tenants in capite to come and receive knighthood from the king, ad recipiendum a nobis arma militaria, and tenants of mesne lords to be knighted by whomsoever they pleased, ad recipiendum arma de quibuscunque voluerint.—Titles of Honour, p. 792. But soon after this time it became an established principle of our law, that no subject can confer knighthood except by the king's authority. Thus Edward III. grants to a burgess of *Lyndia* in Guienne (I know not what place this is) the privilege of receiving that rank at the hands of any knight, his want of noble birth notwithstanding.—Rymer, t. v., p. 623. It seems, however, that a different law obtained in some places. Twenty-three of the chief inhabitants of Beaucaire, partly knights, partly burgesses, certified, in 1298, that the immemorial usage of Beaucaire and of Provence had been, for burgesses to receive knighthood at the hands of noblemen, without the prince's permission.—Vaissette, Hist. de Languedoc, t. iii., p. 530. Burgesses in the great commercial towns were considered as of a superior class to the roturiers, and possessed a kind of demi-nobility. Charles V. appears to have conceded a similar indulgence to the citizens of Paris.—Villaret, t. x., p. 218.

* St. Palaye, part iii., passim.

† The word bachelor has been commonly derived from bas chevalier, in opposition to banneret. But this, however plausible, is unlikely to be right. We do not find any authority for the expression bas chevalier, nor any equivalent in Latin, baccalaureus certainly not suggesting that sense; and it is strange that the corruption should obliterate every trace of the original term. Bachelor is a very old word, and is used in early French poetry for a young man, as bachelette is for a girl. So also in Chaucer,

"A yonge squire,
A lover, and a lusty *bachelor*."

‡ Du Cange, Dissertation 9me sur Joinville. The number of men-at-arms whom a banneret ought to command was properly fifty. But Olivier de la Marche speaks of twenty-five as sufficient; and it appears that, in fact, knights-banneret often did not bring so many.

§ Ibid. Olivier de la Marche (Collection des Mémoires, t. viii., p. 337) gives a particular example of this; and makes a distinction between the bachelor, created a banneret on account of his estate, and the hereditary banneret, who took a public opportunity of requesting the sovereign to unfold his family banner, which he had before borne wound round his lance. The first was said relever banniere; the second, entrer en banniere. This difference is more fully explained by Daniel, Hist

elevated the banneret, gave him no claim to military command, except over his own dependants or men-at-arms. Chandos was still a knight-bachelor when he led part of the Prince of Wales's army into Spain. He first raised his banner at the battle of Navarette; and the narration that Froissart gives of the ceremony will illustrate the manners of chivalry, and the character of that admirable hero, the conqueror of Du Guesclin and pride of English chivalry, whose fame with posterity has been a little overshadowed by his master's laurels.* What seems more extraordinary is, that mere squires had frequently the command over knights. Proofs of this are almost continual in Froissart. But the vast estimation in which men held the dignity of knighthood led them sometimes to defer it for great part of their lives, in hope of signalizing their investiture by some eminent exploit.

Decline of chivalry.

These appear to have been the chief means of nourishing the principles of chivalry among the nobility of Europe. But, notwithstanding all encouragement, it underwent the usual destiny of human institutions. St. Palaye, to whom we are indebted for so vivid a picture of ancient manners, ascribes the decline of chivalry in France to the profusion with which the order was lavished under Charles VI., the establishment of the companies of ordonnance by Charles VII., and to the extension of knightly honours to lawyers and other men of civil occupation by Francis I.† But the real principle of decay was something different from these three subordinate circumstances, unless so far as it may bear some relation to the second. It was the invention of gunpowder that eventually overthrew chivalry. From the time when the use of fire-arms became tolerably perfect, the weapons of former warfare lost their efficacy, and physical force was reduced to a very subordinate place in the accomplishments of a soldier. The advantages of a disciplined infantry became more sensible; and the lancers, who continued till almost the end of the sixteenth century to charge in a long line, felt the punishment of their presumption and indiscipline. Even in the wars of Edward III., the disadvantageous tactics of chivalry must have been perceptible; but the military art had not been sufficiently studied to overcome the prejudices of men eager for individual distinction. Tournaments became less frequent; and, after the fatal accident of Henry II., were entirely discontinued in France. Notwithstanding the convulsions of the religious wars, the sixteenth century was more tranquil than any that had preceded; and thus a large part of the nobility passed their lives in pacific habits, and, if they assumed the honours of chivalry, forgot their natural connexion with military prowess. This is far more applicable to England, where, except from the reign of Edward III. to that of Henry VI., chivalry, as a military institution, seems not to have found a very congenial soil.* To these circumstances, immediately affecting the military condition of nations, we must add the progress of reason and literature, which made ignorance discreditable even in a soldier, and exposed the follies of romance to a ridicule which they were very ill calculated to endure.

The spirit of chivalry left behind it a more valuable successor. The character of knight gradually subsided in that of gentleman; and the one distinguishe European society in the sixteenth and seventeenth centuries, as much as the other did in the preceding ages. A jealous sense of honour, less romantic, bu equally elevated, a ceremonious gallantry and politeness, a strictness in devotional observances, a high pride of birth, and feeling of independence upon any sovereign for the dignity it gave, a sympathy for martial honour, though more subdued

de la Milice Françoise, p. 116. Chandos's banner was unfolded, not cut, at Navarette. We read sometimes of esquire-bannerets, that is of banners by descent, not yet knighted.

* Froissart, part i., c. 241.

† Mém. sur la Chevalerie, part v.

* The prerogative exercised by the kings of England of compelling men sufficiently qualified in point of estate to take on them the honour of knighthood, was inconsistent with the true spirit of chivalry. This began, according to Lord Lyttleton, under Henry III.—Hist. of Henry II., vol. ii., p. 238. Independently of this, several causes tended to render England less under the influence of chivalrous principles than France or Germany, such as her comparatively peaceful state, the smaller share she took in the crusades, her inferiority in romances of knight-errantry, but, above all, the democratical character of her laws and government. Still this is only to be understood relatively to the two other countries above named; for chivalry was always in high repute among us, nor did any nation produce more admirable specimens of its excellences.

I am not minutely acquainted with the state of chivalry in Spain, where it seems to have flourished considerably. Italy, except in Naples, and perhaps Piedmont, displayed little of its spirit; which neither suited the free republics of the twelfth and thirteenth, nor the jealous tyrannies of the following centuries. Yet even here we find enough to furnish Muratori with materials for his 53d dissertation.

by civil habits, are the lineaments which prove an indisputable descent. The cavaliers of Charles I. were genuine successors of Edward's knights; and the resemblance is much more striking if we ascend to the civil wars of the League. Time has effaced much also of this gentlemanly, as it did before of the chivalrous character. From the latter part of the seventeenth century, its vigour and purity have undergone a tacit decay, and yielded, perhaps in every country, to increasing commercial wealth, more diffused instruction, the spirit of general liberty in some, and of servile obsequiousness in others, the modes of life in great cities, and the levelling customs of social intercourse.*

Literature.

It is now time to pass to a very different subject. The third head under which I classed the improvements of society during the four last centuries of the middle ages, was that of literature. But I must apprize the reader not to expect any general view of literary history, even in the most abbreviated manner. Such an epitome would not only be necessarily superficial, but foreign, in many of its details, to the purposes of this chapter, which, attempting to develop the circumstances that gave a new complexion to society, considers literature only so far as it exercised a general and powerful influence. The private researches, therefore, of a single scholar unproductive of any material effect in his generation, ought not to arrest us, nor indeed would a series of biographical notices, into which literary history is apt to fall, be very instructive to a philosophical inquirer. But I have still a more decisive reason against taking a large range of literary history into the compass of this work, founded on the many contributions which have been made within the last forty years to that department, some of them even since the commencement of my own labour.* These have diffused so general an acquaintance with the literature of the middle ages, that I must, in treating the subject, either compile secondary information from well-known books, or enter upon a vast field of reading, with little hope of improving upon what has been already said, or even acquiring credit for original research. I shall therefore confine myself to four points: the study of civil law; the institution of universities; the application of modern languages to literature, and especially to poetry, and the revival of ancient learning.

Civil law.

The Roman law had been nominally preserved ever since the destruction of the empire; and a great portion of the inhabitants of France and Spain, as well as Italy, were governed by its provisions. But this was a mere compilation from the Theodosian code; which itself contained only the more recent laws promulgated after the establishment of Christianity, with some fragments from earlier collections. It was made by order of Alaric, king of the Visigoths, about the year 500, and it is frequently confounded with the Theodosian code by writers of the dark ages.† The code of Justinian, reduced into system after the separation of the two former countries from the Greek empire, never obtained any authority in them: nor was it received in the part of Italy subject to the Lombards. But that this body of laws was absolutely unknown in the West during any period seems to have been too hastily supposed. Some of the more eminent ecclesiastics, as Hincmar and Ivon of Chartres, occasionally refer to it, and bear witness to the regard which the Roman church had uniformly paid to its decisions.‡

The revival of the study of jurisprudence, as derived from the laws of Justinian, has generally been ascribed to the discovery made of a copy of the Pandects at Amalfi, in 1135, when that city was taken by the Pisans. This fact, though not improbable, seems not to

* The well-known Memoirs of St. Palaye are the best repository of interesting and illustrative facts respecting chivalry. Possibly he may have relied a little too much on romances, whose pictures will naturally be overcharged. Froissart himself has somewhat of this partial tendency, and the manners of chivalrous times do not make so fair an appearance in Monstrelet. In the Memoirs of la Tremouille (Collect. des Mém., t. xiv., p. 169), we have perhaps the earliest delineation from the life of those severe and stately virtues in high-born ladies, of which our own country furnishes so many examples in the sixteenth and seventeenth centuries, and which were derived from the influence of chivalrous principles. And those of Bayard in the same collection (t. xiv. and xv.) are a beautiful exhibition of the best effects of that discipline.

* Four very recent publications (not to mention that of Buhle on modern philosophy) enter much at large into the middle literature; those of M. Ginguené and M. Sismondi, the History of England by Mr. Sharon Turner, and the Literary History of the Middle Ages by Mr. Berington. All of these contain more or less useful information and judicious remarks; but that of Ginguené is among the most learned and important works of this century. I have no hesitation to prefer it, as far as its subjects extend, to Tiraboschi.

† Heineccius, Hist. Juris German., c. i., s. 15.

‡ Giannone, l. iv., c. 6 Selden, ad Fletam p. 1071.

rest upon sufficient evidence.* But its truth is the less material, as it appears to be unequivocally proved that the study of Justinian's system had recommenced before that era. Early in the twelfth century, a professor named Irnerius† opened a school of civil law at Bologna, where he commented, if not on the Pandects, yet on the other books, the Institutes and Code, which were sufficient to teach the principles and inspire the love of that comprehensive jurisprudence The study of law, having thus revived, made a surprising progress; within fifty years Lombardy was full of lawyers, on whom Frederick Barbarossa and Alexander III., so hostile in every other respect, conspired to shower honours and privileges. The schools of Bologna were pre-eminent throughout this century for legal learning. There seem also to have been seminaries at Modena and Mantua; nor was any considerable city without distinguished civilians. In the next age they became still more numerous, and their professors more conspicuous, and universities arose at Naples, Padua, and other places, where the Roman law was the object of peculiar regard.‡

There is apparently great justice in the opinion of Tiraboschi, that by acquiring internal freedom and the right of determining controversies by magistrates of their own election, the Italian cities were led to require a more extensive and accurate code of written laws than they had hitherto possessed. These municipal judges were chosen from among the citizens, and the succession to offices was usually so rapid, that almost every freeman might expect in his turn to partake in the public government, and consequently in the administration of justice. The latter had always indeed been exercised in the sight of the people by the count and his assessors under the Lombard and Carlovingian sovereigns; but the laws were rude, the proceedings tumultuary, and the decisions perverted by violence. The spirit of liberty begot a stronger sense of right; and right, it was soon perceived, could only be secured by a common standard. Magistrates holding temporary offices, and little elevated, in those simple times, above the citizens among whom they were to return, could only satisfy the suiters, and those who surrounded their tribunal, by proving the conformity of their sentences to acknowledged authorities. And the practice of alleging reasons in giving judgment would of itself introduce some uniformity of decision and some adherence to great rules of justice in the most arbitrary tribunals; while, on the other hand, those of a free country lose part of their title to respect, and of their tendency to maintain right, whenever, either in civil or criminal questions, the mere sentence of a judge is pronounced without explanation of its motives.

The fame of this renovated jurisprudence spread very rapidly from Italy over other parts of Europe. Students flocked from all parts of Bologna; and some eminent masters of that school repeated its lessons in distant countries. One of these, Placentinus, explained the digest at Montpelier before the end of the twelfth century; and the collection of Justinian soon came to supersede the Theodosian code in the dominions of Toulouse.* Its study continued to flourish in the universities of both these cities; and hence the Roman law, as it is exhibited in the system of Justinian, became the rule of all tribunals in the southern provinces of France. Its authority in Spain is equally great, or at least is only disputed by that of the canonists:† and it forms the acknowledged basis of decision in all the Germanic tribunals, sparingly modified by the ancient feudal customaries, which the jurists of the empire reduce within narrow bounds.‡ In the northern parts of France, where the legal standard was sought in local customs, the civil law met naturally with less regard. But the code of St. Louis borrows from that treasury many of its provisions, and it was constantly cited in pleadings before the parliament of Paris, either as obligatory by way of authority, or at least as written wisdom, to which great deference was shown.§ Yet its

* Tiraboschi, t. iii., p. 359. Ginguené, Hist. Litt. de l'Italie, t. i., p. 155.

† Irnerius is sometimes called Guarnerius, sometimes Warnerius; the German W is changed into Gu by the Italians, and occasionally omitted, especially in latinizing, for the sake of euphony or purity.

‡ Tiraboschi, t. iv., p. 38, t. v., p. 55.

* Tiraboschi, t. v. Vaissette, Hist. de Languedoc, t. ii., p. 517; t. iii., p. 527; t. iv., p. 504.

† Duck. De Usu Juris civilis, l. ii., c. 6

‡ Idem, l. ii., c. 2.

§ Idem, l. ii., c. 5, s. 30, 31. Fleury, Hist. du Droit François, p. 74 (prefixed to Argou, Institutions au Droit François, edit. 1787) says that it was a great question among lawyers, and still undecided (i. e., in 1674), whether the Roman law was the common law in the pays coutumiers, as to those points wherein their local customs were silent. And, if I understand Denisart (Dictionnaire des Décisions, art. Droit-écrit), the affirmative prevailed. It is plain, at least by the Causes Célèbres that appeal was continually made to the principles

study was long prohibited in the university of Paris, from a disposition of the popes to establish exclusively their decretals, though the prohibition was silently disregarded.*

Its introduction into England

As early as the reign of Stephen, Vacarius, a lawyer of Bologna, taught at Oxford with great success; but the students of scholastic theology opposed themselves, from some unexplained reason, to this new jurisprudence, and his lectures were interdicted.† About the time of Henry III. and Edward I., the civil law acquired some credit in England; but a system entirely incompatible with it had established itself in our courts of justice; and the Roman jurisprudence was not only soon rejected, but became obnoxious.‡ Everywhere, however, the clergy combined its study with that of their own canons; it was a maxim that every canonist must be a civilian, and that no one could be a good civilian unless he were also a canonist. In all universities, degrees are granted in both laws conjointly; and in all courts of ecclesiastical jurisdiction, the authority of Justinian is cited, when that of Gregory or Clement is wanting.§

The elder civilians little regarded.

I should earn little gratitude for my obscure diligence, were I to dwell on the forgotten teachers of a science that is likely soon to be forgotten. These elder professors of Roman jurisprudence are infected, as we are told, with the faults and ignorance of their time; failing in the exposition of ancient law through incorrectness of manuscripts and want of subsidiary learning, or perverting their sense through the verbal subtleties of scholastic philosophy. It appears that, even a hundred years since, neither Azzo and Accursius, the principal civilians of the thirteenth century, nor Bartolus and Baldus, the more conspicuous luminaries of the next age, nor the later writings of Accolti, Fulgosius, and Panormitanus, were greatly regarded as authorities; unless it were in Spain, where improvement is always odious, and the name of Bartolus inspired absolute deference.* In the sixteenth century, Alciatus, and the greater Cujacius, became as it were the founders of a new and more enlightened academy of civil law, from which the later jurists derived their lessons.

And the science itself on the decline.

But their names, or at least their writings, are rapidly passing to the gulf that absorbed their predecessors. The stream of literature, that has so remarkably altered its channel within the last century, has left no region more deserted than those of the civil and canon law. Except among the immediate disciples of the papal court, or perhaps in Spain, no man, I suppose, throughout Europe, will ever again undertake the study of the one; and the new legal systems which the moral and political revolutions of this age have produced and are likely to diffuse, will leave little influence or importance to the other. Yet, as their character, so their fate will not be altogether similar. The canon law, fabricated only for a usurpation that can never be restored, will become absolutely useless, as if it had never existed; like a spacious city in the wilderness, though not so splendid and interesting as Palmyra. But the code of Justinian, stripped of its impurer alloy, and of the tedious glosses of its commentators, will form the basis of other systems, and mingling, as we may hope, with the new institutions of philosophical legislators, continue to influence the social relations of mankind, long after its direct authority shall have been abrogated. The ruins of ancient Rome supplied the materials of a new city; and the fragments of her law, which have already been wrought into the recent codes of France and Prussia, will probably, under other names, guide far distant generations by the sagacity of Modestinus and Ulpian.†

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of the civil law in the *factums* of Parisian advocates.

* Crevier, Hist. de l'Université de Paris, t. i., p. 316; t. ii., p. 275.

† Johan. Salisburiensis, apud Selden ad Fletam, p. 1082.

‡ Selden, ubi supra, p. 1095—1104. This passage is worthy of attention. Yet, notwithstanding Selden's authority, I am not satisfied that he has not extenuated the effect of Bracton's predilection for the maxims of Roman jurisprudence. No early lawyer has contributed so much to form our own system as Bracton: and if his definitions and rules are sometimes borrowed from the civilians, as all admit, our common law may have indirectly received greater modification from that influence than its professors were ready to acknowledge, or even than they knew. A full view of this subject is still, I think, a desideratum in the history of English law, which it would illustrate in a very interesting manner.

§ Duck De Usu Juris civilis, l. i., c. 87.

* Gravina, Origines Juris civilis, p. 196.

† Those, if any such there be, who feel some curiosity about the civilians of the middle ages, will find a concise and elegant account in Gravina, De Origine Juris civilis, p. 166—206.—(Lips., 1708.) Tiraboschi contains perhaps more information; but his prolixity, on a theme so unimportant, is very wearisome. Of what use could he think it to discuss the dates of all transactions in the lives of Bartolus and Baldus (to say nothing of obscurer names) when nobody was left to care who Baldus

Public schools established by Charlemagne

The establishment of public schools in France is owing to Charlemagne. At his accession, we are assured that no means of education existed in his dominions;* and, in order to restore in some degree the spirit of letters, he was compelled to invite strangers from countries where learning was not so thoroughly extinguished. Alcuin of England, Clement of Ireland, Theodulf of Germany, were the true Paladins who repaired to his court. With the help of these he revived a few sparks of diligence, and established schools in different cities of his empire; nor was he ashamed to be the disciple of that in his own palace under the care of Alcuin.† His two next successors, Louis the Debonair and Charles the Bald, were also encouragers of letters; and the schools of Lyons, Fulda, Corvey, Rheims, and some other cities, might be said to flourish in the ninth century.‡ In these were taught the trivium and quadrivium, a long established division of sciences; the first comprehending grammar, or what we now call philology, logic, and rhetoric; the second music, arithmetic, geometry, and astronomy.◊ But in those ages scarcely anybody mastered the latter four; and to be perfect in the three former was exceedingly rare. All those studies, however, were referred to theology, and that in the narrowest manner; music, for example, being reduced to church chanting, and astronomy to the calculation of Easter.‖ Alcuin forbade the Latin poets to be read;¶ and this discouragement of secular learning was very general; though some, as for instance Raban, permitted a slight tincture of it, as subsidiary to religious instruction.**

University of Paris.

About the latter part of the eleventh century, a greater ardour for intellectual pursuits began to show itself in Europe, which in the twelfth broke out into a flame. This was manifested in the numbers who repaired to the public academies or schools of philosophy. None of these grew so early into reputation as that of Paris. This cannot, indeed, as has been vainly pretended, trace its pedigree to Charlemagne. The first who is said to have read lectures at Paris was Remigius of Auxerre, about the year 900.* For the two next centuries the history of this school is very obscure; and it would be hard to prove an unbroken continuity, or at least a dependance and connexion of its professors. In the year 1100, we find William of Champeaux teaching logic, and apparently some higher parts of philosophy, with much credit. But this preceptor was eclipsed by his disciple, afterward his rival and adversary, Peter Abelard, to whose brilliant and hardy genius the university of Paris appears to be indebted for its rapid advancement. Abelard was almost the first who awakened mankind in the ages of darkness to a sympathy with intellectual excellence. His bold theories not the less attractive perhaps for treading upon the bounds of heresy, his imprudent vanity, that scorned the regularly acquired reputation of older men, allured a multitude of disciples, who would never have listened to an ordinary teacher. It is said, that twenty cardinals and fifty bishops had been among his hearers.† Even in the wilderness, where he had erected the monastery of Paraclete, he was surrounded by enthusiastic admirers, relinquishing the luxuries, if so they might be called, of Paris, for the coarse living and imperfect accommodation which that retirement could afford.‡ But the whole of Abelard's life was the shipwreck of genius; and of genius both the source of his own calamities and unserviceable to posterity. There are few lives of literary men more interesting, or more diversified by success and adversity, by glory and humiliation, by the admiration of mankind and the persecution of enemies; nor from which, I may add, more impressive lessons of moral prudence may be derived. One of Abelard's pupils was Peter Lombard, afterward archbishop of Paris, and

Abelard.

and Bartolus were? Besides this fault, it is evident that Tiraboschi knew very little of law, and had not read the civilians of whom he treats; whereas Gravina discusses their merits not only with legal knowledge, but with an acuteness of criticism, which, to say the truth, Tiraboschi never shows except on a date or a name.

* Ante ipsum dominum Carolum regem in Galliâ nullum fuit studium liberalium artium.—Monachus Engolismensis, apud Launoy, De Scholis per occidentem instauratis, p. 5. See too Histoire Littéraire de la France, t. iv., p. 1.

† Idem, ibid. There was a sort of literary club among them, where the members assumed ancient names. Charlemagne was called David; Alcuin, Horace, another, Demetas, &c.

‡ Hist. Littéraire, p. 217, &c.

◊ This division of the sciences is ascribed to St. Augustin; and was certainly established early in the sixth century.—Brucker, Historia Critica Philosophiæ, t. iii., p. 597

‖ Schmidt, Hist. des Allemands, t. ii., p. 126.

¶ Crevier, Hist. de l'Univ. de Paris, t. i., p. 28.

** Brucker, t. iii, p. 612 Raban Maurus was chief of the cathedral school at Fulda, in the ninth century.

* Crevier, p. 66.

† Crevier, p. 171. Brucker, p. 677 Tiraboschi t. iii., p 275.

‡ Brucker, p. 750.

author of a work called the Book of Sentences, which obtained the highest authority among the scholastic disputants. The resort of students to Paris became continually greater; they appear, before the year 1169, to have been divided into nations;* and probably they had an elected rector and voluntary rules of discipline about the same time. This, however, is not decisively proved; but in the last year of the twelfth century, they obtained their earliest charter from Philip Augustus.†

University of Oxford.

The opinion which ascribes the foundation of the university of Oxford to Alfred, if it cannot be maintained as a truth, contains no intrinsic marks of error. Ingulfus, abbot of Croyland, in the earliest authentic passage that can be adduced to this point,‡ declares that he was sent from Westminster to the school at Oxford, where he learned Aristotle, and the two first books of Tully's rhetoric.§ Since a school for dialectics and rhetoric subsisted at Oxford, a town of but middling size, and not the seat of a bishop, we are naturally led to refer its foundation to one of our kings; and none who had reigned after Alfred appears likely to have manifested such zeal for learning. However, it is evident that the school of Oxford was frequented under Edward the Confessor. There follows an interval of above a century, during which we have, I believe, no contemporary evidence of its continuance. But in the reign of Stephen, Vacarius read lectures there upon civil law; and it is reasonable to suppose that a foreigner would not have chosen that city if he had not found a seminary of learning already established. It was probably inconsiderable, and might have been interrupted during some part of the preceding century.* In the reign of Henry II., or at least of Richard I., Oxford became a very flourishing university, and in 1201, according to Wood, contained 3000 scholars.† The earliest charters were granted by John.

University of Bologna

If it were necessary to construe the word university in the strict sense of a legal incorporation, Bologna might lay claim to a higher antiquity than either Paris or Oxford. There are a few vestiges of studies pursued in that city even in the eleventh century:‡ but early in the next, the revival of the Roman jurisprudence as has been already noticed, brought a throng of scholars round the chairs of its professors. Frederick Barbarossa, in 1158, by his authentic or rescript entitled Habita, took these under his protection, and permitted them to be tried in civil suits by their own judges. This exemption from the ordinary tribunals, and even from those of the church, was naturally coveted by other academies; it was granted to the university of Paris by its earliest charter from Philip Augustus, and to Oxford by John. From this time the golden age of universities commenced; and it is hard to say whether they were favoured most by their sovereigns or by the see of Rome. Their history indeed is full of struggles with the municipal authorities, and with the bishops of their several cities, wherein they were sometimes the aggressors, and generally the conquerors. From all parts of Europe students resorted to these renowned seats of learning

Encouragement given to universities.

* The faculty of arts in the university of Paris was divided into four nations; those of France, Picardy, Normandy, and England. These had distinct suffrages in the affairs of the university, and consequently, when united, outnumbered the three higher faculties of theology, law, and medicine. In 1169, Henry II. of England offers to refer his dispute with Becket to the provinces of the school of Paris.

† Crevier, t. i., p. 279. The first statute regulating the discipline of the university was given by Robert de Courçon, legate of Honorius III., in 1215, id., p. 296.

‡ No one probably would choose to rely on a passage found in one manuscript of Asserius, which has all appearance of an interpolation. It is evident, from an anecdote in Wood's History of Oxford, vol. i., p. 23 (Gutch's edition), that Camden did not believe in the authenticity of this passage, though he thought proper to insert it in the Britannia.

§ The mention of Aristotle at so early a period might seem to throw some suspicion on this passage. But it is impossible to detach it from the context; and the works of Aristotle intended by Ingulfus were translations of parts of his logic by Boethius and Victorin.—Brucker, p. 678. A passage indeed in Peter of Blois's continuation of Ingulfus, where the study of Averroes is said to have taken place at *Cambridge* some years before he was born, is of a different complexion, and must of course be rejected as spurious. In the Gesta Comitum Andegavensium, Fulk, count of Anjou, who lived about 920, is said to have been skilled Aristotelicis et Ciceronianis ratiocinationibus.

* It may be remarked, that John of Salisbury, who wrote in the first years of Henry II.'s reign, since his Policraticus is dedicated to Becket, before he became archbishop, makes no mention of Oxford, which he would probably have done if it had been an eminent seat of learning at that time.

† Wood's Hist. and Antiquities of Oxford, p. 177. The Benedictins of St. Maur say that there was an eminent school of canon law at Oxford about the end of the twelfth century, to which many students repaired from Paris.—Hist. Litt. de la France, t. ix., p. 216.

‡ Tiraboschi, t. iii., p. 259, et alibi. Muratori Dissert. 43

with an eagerness for instruction which may astonish those who reflect how little of what we now deem useful could be imparted. At Oxford, under Henry III., it is said that there were 30,000 scholars; an exaggeration which seems to imply that the real number was very great.* A respectable contemporary writer asserts that there were full 10,000 at Bologna about the same time.† I have not observed any numerical statement as to Paris during this age; but there can be no doubt that it was more frequented than any other. At the death of Charles VII., in 1453, it contained 25.000 students.‡ In the thirteenth century, other universities sprang up in different countries: Padua and Naples, under the patronage of Frederick II., a zealous and useful friend to letters,§ Toulouse and Montpelier, Cambridge and Salamanca.‖ Orleans, which had long been distinguished as a school of civil law, received the privileges of incorporation early in the fourteenth century; and Angers before the expiration of the same age.¶ Prague, the earliest and most eminent of German universities, was founded in 1350; a secession from thence of Saxon students, in consequence of the nationality of the Bohemians and the Hussite schism, gave rise to that of Leipsic.* The fifteenth century produced several new academical foundations in France and Spain.

A large proportion of scholars, in most of those institutions, were drawn by the love of science from foreign countries. The chief universities had their own particular departments of excellence. Paris was unrivalled for scholastic theology; Bologna and Orleans, and afterward Bourges, for jurisprudence; Montpelier for medicine. Though national prejudices, as in the case of Prague, sometimes interfered with this free resort of foreigners to places of education, it was in general a wise policy of government, as well as of the universities themselves, to encourage it. The thirty-fifth article of the peace of Bretigni provides for the restoration of former privileges to students respectively in the French and English universities.† Various letters patent will be found in Rymer's collection, securing to Scottish as well as French natives a safe passage to their place of education. The English nation, including however the Flemings and Germans,‡ had a separate vote in the faculty of arts at Paris. But foreign students were not, I believe, so numerous in the English academies.

If endowments and privileges are the means of quickening a zeal for letters, they were liberally bestowed in the three last of the middle ages. Crevier enumerates fifteen colleges, founded in the university of Paris during the thirteenth century, besides one or two of a still earlier date. Two only, or at most three, existed in that age at Oxford, and but one at Cambridge. In the next two centuries, these universities could boast, as every one knows, of many splendid foundations; though much exceeded in number by those of Paris. Considered as ecclesiastical institutions, it is not surprising that the universities obtained, according to the spirit of their age, an exclusive cognizance of civil or criminal suits affecting their members. This jurisdiction was, however, local as well as personal, and in reality encroached on the regular police of their cities. At Paris the privilege turned to a flagrant abuse, and gave rise to many scandalous contentions.§ Still more valuable ad-

* "But among these," says Anthony Wood, "a company of varlets, who pretended to be scholars, shuffled themselves in, and did act much villany in the university by thieving, whoring, quarrelling, &c. They lived under no discipline, neither had they tutors; but only, for fashion sake, would sometimes thrust themselves into the schools at ordinary lectures, and when they went to perform any mischief, then would they be accounted scholars, that so they might free themselves from the jurisdiction of the burghers," p. 206. If we allow three varlets to one scholar, the university will still have been very fully frequented by the latter.

† Tiraboschi, t. iv., p. 47. Azarius, about the middle of the fourteenth century, says, the number was about 13,000 in his time.—Muratori, Script. Rer. Ital, t. xvi., p. 325.

‡ Villaret, Hist. de France, t. xvi., p. 341. This may perhaps require to be taken with allowance. But Paris owes a great part of its buildings on the southern bank of the Seine to the university. The students are said to have been about 12,000 before 1480.—Crevier, t. iv., p. 410.

§ Tiraboschi, t. iv., p. 43 and 46.

‖ The earliest authentic mention of Cambridge as a place of learning, if I mistake not, is in Matthew Paris, who informs us, that in 1209, John having caused three clerks of Oxford to be hanged on suspicion of murder, the whole body of scholars left that city, and emigrated, some to Cambridge, some to Reading, in order to carry on their studies (p. 191, edit. 1684). But it may be conjectured, with some probability, that they were led to a town so distant as Cambridge by the previous establishment of academical instruction in that place. The incorporation of Cambridge is in 1231 (15 Hen. III.), so that there is no great difference in the legal antiquity of our two universities.

¶ Crevier, Hist. de l'Université de Paris, t. ii., p. 216 t. iii., p. 140

* Pfeffel, Abrégé Chronologique de l'Hist de l'Allemagne, p. 550, 607.

† Rymer, t. vi., p. 292. ‡ Crevier, t ii., p. 398

§ Crevier and Villaret, passim

vantages were those relating to ecclesiastical preferments, of which a large proportion was reserved in France to academical graduates. Something of the same sort, though less extensive, may still be placed in the rules respecting plurality of benefices in our English church.

Causes of their celebrity.

This remarkable and almost sudden transition from a total indifference to all intellectual pursuits cannot be ascribed perhaps to any general causes. The restoration of the civil, and the formation of the canon law, were indeed eminently conducive to it, and a large proportion of scholars in most universities confined themselves to jurisprudence. But the chief attraction to the studious was the new scholastic philosophy. The love of contention, especially with such arms as the art of dialectics supplies to an acute understanding, is natural enough to mankind. That of speculating upon the mysterious questions of metaphysics and theology is not less so. These disputes and speculations, however, appear to have excited little interest, till, after the middle of the eleventh century, Roscelin, a professor of logic, revived the old question of the Grecian schools respecting universal ideas, the reality of which he denied. This kindled a spirit of metaphysical discussion, which Lanfranc and Anselm, successively archbishops of Canterbury, kept alive; and in the next century, Abelard and Peter Lombard, especially the latter, completed the scholastic system of philosophizing. The logic of Aristotle seems to have been partly known in the eleventh century, although that of Augustin was perhaps in higher estimation;* in the twelfth it obtained more decisive influence. His metaphysics, to which the logic might be considered as preparatory, were introduced through translations from the Arabic, and perhaps also from the Greek, early in the ensuing century.† This

Scholastic philosophy.

work, condemned at first by the decrees of popes and councils, on account of its supposed tendency to atheism, acquired by degrees an influence, to which even popes and councils were obliged to yield. The Mendicant Friars, established throughout Europe in the thirteenth century, greatly contributed to promote the Aristotelian philosophy; and its final reception into the orthodox system of the church may chiefly be ascribed to Thomas Aquinas, the boast of the Dominican order, and certainly the most distinguished metaphysician of the middle ages. His authority silenced all scruples as to that of Aristotle, and the two philosophers were treated with equally implicit deference by the later schoolmen.*

This scholastic philosophy, so famous for several ages, has since passed away and been forgotten. The history of literature, like that of empire, is full of revolutions. Our public libraries are cemeteries of departed reputation; and the dust accumulating upon their untouched volumes speaks as forcibly as the grass that waves over the ruins of Babylon. Few, very few, for a hundred years past, have broken the repose of the immense works of the schoolmen. None perhaps in our own country have acquainted themselves particularly with their contents. Leibnitz, however, expressed a wish that some one conversant with modern philosophy would undertake to extract the

* Brucker, Hist. Crit. Philosophiæ, t. iii., p. 678.

† Id., ibid. Tiraboschi conceives that the translations of Aristotle made by command of Frederick II. were directly from the Greek, t. iv., p. 145; and censures Brucker for the contrary opinion. Buhle, however (Hist. de la Philosophie Moderne, t. i., p. 696), appears to agree with Brucker. It is almost certain that versions were made from the Arabic Aristotle: which itself was not immediately taken from the Greek, but from a Syriac medium.—Ginguené, Hist. Litt. de l'Italie, t. i., p. 212 (on the authority of M. Langlés).

It was not only a knowledge of Aristotle that the scholastics of Europe derived from the Arabic language. His writings had produced in the flourishing Mahometan kingdoms a vast number of commentators, and of metaphysicians trained in the same school. Of these, Averroes, a native of Cordova, who died early in the thirteenth century, was the most eminent. It would be curious to examine more minutely than has hitherto been done the original writings of these famous men, which no doubt have suffered in translation. A passage in Al Gazel, which Mr. Turner has rendered from the Latin, with all the disadvantage of a double remove from the author's words, appears to state the argument in favour of that class of *nominalists*, called *conceptualists* (the only *realists* who remain in the present age), with more clearness and precision than any thing I have seen from the schoolmen. Al Gazel died in 1126, and consequently might have suggested this theory to Abelard, which however is not probable.—Turner's Hist. of England, vol. i., p. 513.

* Brucker, Hist. Crit. Philosophiæ, t. iii. I have found no better guide than Brucker. But he confesses himself not to have read the original writings of the scholastics; an admission which every reader will perceive to be quite necessary. Consequently, he gives us rather a verbose declamation against their philosophy, than any clear view of its character. Of the valuable works lately published in Germany on the history of Philosophy, I have only seen that of Buhle, which did not fall into my hands till I had nearly written these pages. Tiedeman and Tenneman are, I believe, still untranslated.

scattered particles of gold which may be hidden in their abandoned mines. This wish has been at length partially fulfilled by three or four of those industrious students and keen metaphysicians, who do honour to modern Germany. But most of their works are unknown to me except by repute; and as they all appear to be formed on a very extensive plan, I doubt whether even those laborious men could afford adequate time for this ungrateful research. Yet we cannot pretend to deny, that Roscelin, Anselm, Abelard, Peter Lombard, Albertus Magnus, Thomas Aquinas, Duns Scotus, and Ockham, were men of acute and even profound understandings, the giants of their own generation. Even with the slight knowledge we possess of their tenets, there appear through the cloud of repulsive technical barbarisms rays of metaphysical genius which this age ought not to despise. Thus, in the works of Anselm is found the celebrated argument of Des Cartes for the existence of a Deity, deduced from the idea of an infinitely perfect being. One great object that most of the schoolmen had in view was to establish the principles of natural theology by abstract reasoning. This reasoning was doubtless liable to great difficulties. But a modern writer, who seems tolerably acquainted with the subject, assures us that it would be difficult to mention any theoretical argument to prove the divine attributes, or any objection capable of being raised against the proof, which we do not find in some of the scholastic philosophers.* The most celebrated subjects of discussion, and those on which this class of reasoners were most divided, were the reality of universal ideas, considered as extrinsic to the human mind, and the freedom of will. These have not ceased to occupy the thoughts of metaphysicians; but it will generally be allowed that the prevalence of the Realists in the former question does not give a favourable impression of the scholastic system.†

But all discovery of truth by means of these controversies was rendered hopeless by two insurmountable obstacles: the authority of Aristotle, and that of the church. Wherever obsequious reverence is substituted for bold inquiry, truth if she is not already at hand, will never be attained. The scholastics did not understand Aristotle, whose original writings they could not read;* but his name was received with implicit faith. They learned his peculiar nomenclature, and fancied that he had given them realities. The authority of the church did them still more harm. It has been said, and probably with much truth, that their metaphysics were injurious to their theology. But I must observe in return, that their theology was equally injurious to their metaphysics. Their disputes continually turned upon questions either involving absurdity and contradiction, or at best inscrutable by human comprehension. Those who assert the greatest antiquity of the Roman Catholic doctrine as to the real presence, allow that both the word and the definition of transubstantiation are owing to the scholastic writers. Their subtleties were not always so well received. They reasoned at imminent peril of being charged with heresy, which Roscelin, Abelard, Lombard, and Ockham, did not escape. In the virulent factions that arose out of their metaphysical quarrels, either party was eager to expose its adversary to detraction and persecution. The nominalists were accused, one hardly sees why, with reducing, like Sabellius, the persons of the Trinity to modal distinctions. The Real-

* Buhle, Hist. de la Philos. Moderne, t. i., p. 723. This author raises, upon the whole, a favourable notion of Anselm and Aquinas; but he hardly notices any other.

† Mr. Turner has, with his characteristic spirit of enterprise, examined some of the writings of our chief English schoolmen, Duns Scotus and Ockham (Hist. of Eng., vol. i.), and even given us some extracts from them. They seem to me very frivolous, so far as I can collect their meaning. Ockham, in particular, falls very short of what I had expected; and his nominalism is strangely different from that of Berkeley. We can hardly reckon a man in the right, who is so by accident, and through sophistical reasoning. However, a well-known article in the Edinburgh Review, No. LIII., p. 204, gives, from Tenneman, a more favourable account of Ockham.

Perhaps I may have imagined the scholastics to be more forgotten than they really are. Within a short time, I have met with four living English writers who have read parts of Thomas Aquinas: Mr. Turner, Mr. Berington, Mr. Coleridge, and the Edinburgh Reviewer. Still I cannot bring myself to think that there are four more in this country who could say the same. Certain portions however, of his writings are still read in the course of instruction of some Catholic universities.

* Roger Bacon, by far the truest philosopher of the middle ages, complains of the ignorance of Aristotle's translators. Every translator, he observes, ought to understand his author's subject, and the two languages from which and into which he is to render the work. But none hitherto, except Boethius, have sufficiently known the languages; nor has one, except Robert Grostete (the famous bishop of Lincoln), had a competent acquaintance with science. The rest make egregious errors in both respects. And there is so much misapprehension and obscurity in the Aristotelian writings as thus translated, that no one understands them.—Opus Majus, p. 45.

ists, with more pretence, incurred the imputation of holding a language that savoured of atheism.* In the controversy which the Dominicans and Franciscans, disciples respectively of Thomas Aquinas and Duns Scotus, maintained about grace and free-will, it was of course still more easy to deal in mutual reproaches of heterodoxy But the schoolmen were in general prudent enough not to defy the censures of the church; and the popes, in return for the support they gave to all exorbitant pretensions of the Holy See, connived at this factious wrangling, which threatened no serious mischief, as it did not proceed from any independent spirit of research. Yet, with all their apparent conformity to the received creed, there was, as might be expected from the circumstances, a great deal of real deviation from orthodoxy, and even of infidelity. The scholastic mode of dispute, admitting of no termination, and producing no conviction, was the sure cause of skepticism; and the system of Aristotle, especially with the commentaries of Averroes, bore an aspect very unfavourable to natural religion.† The Aristotelian philosophy, even in the hands of the master, was like a barren tree, that conceals its want of fruit by profusion of leaves But the scholastic ontology was much worse. What could be more trifling than disquisitions about the nature of angels, their modes of operation, their means of conversing, or (for these were distinguished) the morning and evening state of their understandings!‡ Into such follies the schoolmen appear to have launched, partly because there was less danger of running against a heresy in a matter where the church had defined so little; partly from their presumption, which disdained all inquiries into the human mind, as merely a part of physics; and in no small degree through a spirit of mystical fanaticism, derived from the oriental philosophy, and the latter Platonists, which blended itself with the cold-blooded technicalities of the Aristotelian school.* But this unproductive waste of the faculties could not last forever. Men discovered that they had given their time for the promise of wisdom, and been cheated in the bargain. What John of Salisbury observes of the Parisian dialectitians in his own time, that after several years absence he found them not a step advanced, and still employed in urging and parrying the same arguments, was equally applicable to the period of centuries. After three or four hundred years, the scholastics had not untied a single knot, nor added one unequivocal truth to the domain of philosophy. As this became more evident, the enthusiasm for that kind of learning declined; after the middle of the fourteenth century, few distinguished teachers arose among the schoolmen; and at the revival of letters, their pretended science had no advocates left but among the prejudiced or ignorant adherents of established systems. How different is the state of genuine philosophy, the zeal for which will never wear out by length of time or

* Brucker, p 733, 912. Mr. Turner has fallen into some confusion as to this point, and supposes the nominalist system to have had a pantheistical tendency, not clearly apprehending its characteristics, p. 512.

† Petrarch gives a curious account of the irreligion that prevailed among the learned at Venice and Padua, in consequence of their unbounded admiration for Aristotle and Averroes. One of this school, conversing with him, after expressing much contempt for the Apostles and Fathers, exclaimed: Utinam tu Averroim patì posses, ut videres quanto ille tuis his nugatoribus major sit!—Mém. de Pétrarque, t. iii., p. 759. Tiraboschi, t. v., p. 162.

‡ Brucker, p 898.

* This mystical philosophy appears to have been introduced into Europe by John Scotus, whom Buhle treats as the founder of the scholastic philosophy; though, as it made no sensible progress for two centuries after his time, it seems more natural to give that credit to Roscelin and Anselm Scotus, or Erigena, as he is perhaps more frequently called, took up, through the medium of a spurious work, ascribed to Dionysius the Areopagite that remarkable system, which has from time immemorial prevailed in some schools of the East, wherein all external phenomena, as well as all subordinate intellects, are considered as *emanating* from the Supreme Being, into whose essence they are hereafter to be absorbed. This system, reproduced under various modifications, and combined with various theories of philosophy and religion, is perhaps the most congenial to the spirit of solitary speculation, and consequently the most extensively diffused of any which those high themes have engendered. It originated, no doubt, in sublime conceptions of Divine omnipotence and ubiquity. But clearness of expression, or indeed of ideas, being not easily connected with mysticism the language of philosophers adopting the theory of emanation is often hardly distinguishable from that of the pantheists. Brucker, very unjustly, as I imagine from the passages he quotes, accuses John Erigena of pantheism.—(Hist. Crit. Philos., p. 620.) The charge would, however, be better grounded against some whose style might deceive an unaccustomed reader. In fact, the philosophy of emanation leads very nearly to the doctrine of a universal substance, which begot the atheistic system of Spinoza, and which appears to have revived with similar consequences among the metaphysicians of Germany. How very closely the language of this oriental philosophy, or even of that which regards the Deity as the soul of the world, may verge upon pantheism, will be perceived (without the trouble of reading the first book of Cudworth) from two famous passages of Virgil and Lucan.—Georg., l. iv., v. 219; and Pharsalia, l. viii., v. 578.

change of fashion, because the inquirer, unrestrained by authority, is perpetually cheered by the discovery of truth in researches which the boundless riches of nature seem to render indefinitely progressive!

Yet, upon a general consideration, the attention paid in the universities to scholastic philosophy may be deemed a source of improvement in the intellectual character, when we compare it with the perfect ignorance of some preceding ages. Whether the same industry would not have been more profitably directed, if the love of metaphysics had not intervened, is another question. Philology, or the principles of good taste, degenerated through the prevalence of school logic. The Latin compositions of the twelfth century are better than those of the three that followed; at least on the northern side of the Alps. I do not, however, conceive that any real correctness of taste or general elegance of style was likely to subsist in so imperfect a condition of society. These qualities seem to require a certain harmonious correspondence in the tone of manners, before they can establish a prevalent influence over literature. A more real evil was the diverting studious men from mathematical science. Early in the twelfth century, several persons, chiefly English, had brought into Europe some of the Arabian writings on geometry and physics. In the thirteenth the works of Euclid were commented upon by Campano ;* and Roger Bacon was fully acquainted with them.† Algebra, as far as the Arabians knew it, extending to quadratic equations, was actually in the hands of some Italians at the commencement of the same age, and preserved for almost three hundred years as a secret, though without any conception of its importance. As abstract mathematics require no collateral aid, they may reach the highest perfection in ages of general barbarism; and there seems to be no reason why, if the course of study had been directed that way, there should not have arisen a Newton or a La Place, instead of an Aquinas or an Ockham. The knowledge displayed by Roger Bacon and by Albertus Magnus, even in the mixed mathematics, under every disadvantage from the imperfection of instruments and the want of recorded experience, are sufficient to inspire us with regret that their contemporaries were more inclined to astonishment than to emulation. These inquiries indeed were subject to the ordeal of fire, the great purifier of books and men; for if the metaphysician stood a chance of being burnt as a heretic, the natural philosopher was in not less jeopardy as a magician.*

A far more substantial cause of intellectual improvement was the development of those new languages that sprang out of the corruption of Latin. For three or four centuries after what was called the romance tongue was spoken in France, there remain but few vestiges of its employment in writing; though we cannot draw an absolute inference from our want of proof, and a critic of much authority supposes translations to have been made into it for religious purposes from the time of Charlemagne.† During this period the language was split into two very separate dialects, the regions of which may be considered, though by no means strictly, as divided by the

Cultivation of the new languages.

Division of the romance tongue into two dialects.

* Tiraboschi, t. iv., p. 150.

† There is a very copious and sensible account of Roger Bacon in Wood's History of Oxford, vol. i., p. 332 (Gutch's edition). I am a little surprised that Antony should have found ont Bacon's merit. It is like an oyster judging of a line-of-battle ship. But I ought not to gibe at the poor antiquary when he shows good sense.

The resemblance between Roger Bacon and his greater namesake is very remarkable. Whether Lord Bacon ever read the Opus Majus, I know not, but it is singular that his favourite quaint expression, *prærogativæ* scientiarum, should be found in that work, though not used with the same allusion to the Roman comitia. And whoever reads the sixth part of the Opus Majus, upon experimental science, must be struck by it as the prototype, in spirit, of the Novum Organum. The same sanguine and sometimes rash confidence in the effect of physical discoveries, the same fondness for experiment, the same preference of inductive to abstract reasoning, pervade both works. Roger Bacon's philosophical spirit may be illustrated by the following passage: Duo sunt modi cognoscendi; scilicet per argumentum et experimentum. Argumentum concludit et facit nos concludere questionem; sed non certificat neque removet dubitationem ut quiescat animus in intuitu veritatis, nisi eam inveniat viâ experientiæ; quia multi habent argumenta ad scibilia, sed quia non habent experientiam, negligunt ea, neque vitant nociva nec persequuntur bona. Si enim aliqnis homo, qui nunquam vidit ignem, probavit per argumenta sufficien tia quod ignis comburit et lædit res et destruit, unquam propter hoc quiesceret animus audientis nec ignem vitaret antequam poneret manum vel rem combustibilem ad ignem, ut per experientiam probaret quod argumentum edocebat; sed assumptâ experientiâ combustionis certificatur animus et quiescit in fulgore veritatis, quo argumentum non sufficit, sed experientia. p. 446.

* See the fate of Cecco d'Ascoli in Tiraboschi t. v., p. 174.

† Le Bœuf Mém. de l'Acad. des inscript. t. xvii., p. 711

Loire. These were called the Langue d'Oil and the Langue d'Oc; or, in more modern terms, the French and Provençal dialects. In the latter of these I know of nothing which can even by name be traced beyond the year 1100. About that time, Gregory de Bechada, a gentleman of Limousin, recorded the memorable events of the first crusade, then recent, in a metrical history of great length.* This poem has altogether perished; which, considering the popularity of its subject, as M. Sismondi justly remarks, would probably not have been the case if it had possessed any merit. But very soon afterward, a multitude of poets, like a swarm of summer insects, appeared in the southern provinces of France. These were the celebrated Troubadours, whose fame depends far less on their positive excellence than on the darkness of preceding ages, on the temporary sensation they excited, and their permanent influence on the state of European poetry. From William, count of Poitou, the earliest troubadour on record, who died in 1126, to their extinction about the end of the next century, there were probably several hundred of these versifiers in the language of Provence, though not always natives of France. Millot has published the lives of one hundred and forty-two, besides the names of many more whose history is unknown; and a still greater number, it cannot be doubted, are unknown by name. Among those poets are reckoned a king of England (Richard I.), two of Aragon, one of Sicily, a dauphin of Auvergne, a count of Foix, a prince of Orange, many noblemen, and several ladies. One can hardly pretend to account for this sudden and transitory love of verse; but it is manifestly one symptom of the rapid impulse which the human mind received in the twelfth century, and contemporaneous with the severer studies that began to flourish in the universities. It was encouraged by the prosperity of Languedoc and Provence, undisturbed, comparatively with other countries, by internal warfare, and disposed by the temper of their inhabitants to feel with voluptuous sensibility the charm of music and amorous poetry. But the tremendous storm that fell upon Languedoc in the crusade against the Albigeois shook off the flowers of Provençal verse; and the final extinction of the fief of Toulouse, with the removal of the counts of Provence to Naples, deprived the troubadours of their most eminent patrons. An attempt was made in the next century to revive them, by distributing prizes for the best composition in the Floral Games of Toulouse, which have sometimes been erroneously referred to a higher antiquity.* This institution perhaps still remains; but, even in its earliest period, it did not establish the name of any Provençal poet. Nor can we deem those fantastical solemnities, styled Courts of Love, where ridiculous questions of metaphysical gallantry were debated by poetical advocates, under the presidency and arbitration of certain ladies, much calculated to bring forward any genuine excellence. They illustrate, however, what is more immediately my own object, the general ardour for poetry, and the manners of those chivalrous ages.†

Troubadours of Provence.

The great reputation acquired by the troubadours, and panegyrics lavished on some of them by Dante and Petrarch, excited a curiosity among literary men which has been a good deal disappointed by further acquaintance. An excellent French antiquarian of the last age, La Curne de St Palaye, spent great part of his life in accumulating manuscripts of Provençal poetry, very little of which had ever been printed. Translations from part of this collection, with memorials of the writers were published by Millot; and we certainly do not often meet with passages in his three volumes which give us any poetical pleasure.‡ Some of the original poems have since been published, and the extracts made from them by the recent historians of southern literature are

Their poetical character

* Gregorius, cognomento Bechada, de Castro de Turribus, professione miles, subtilissimi ingenii vir, aliquantulum imbutus literis, horum gesta præliorum maternâ linguâ rythmo vulgari, ut populus pleniter intelligeret, ingens volumen decenter composuit, et ut vera et faceta verba proferret, duodecim annorum spatium super hoc opus operam dedit. Ne verò vilesceret propter verbum vulgare, non sine præcepto episcopi Eustorgii, et consilio Gauberti Normanni hoc opus aggressus est. I transcribe this from M. Heeren's Essai sur les Croisades, p. 447; whose reference is to Labbé, Bibliotheca nova MSS. t. ii. p. 296.

* De Sade, Vie de Pétrarque, t. i., p. 155. Sismondi, Litt. du Midi, t. i., p. 228.

† For the Courts of Love, see De Sade, Vie de Pétrarque, t. ii., note 19. Le Grand, Fabliaux, t. i., p. 270. Roquefort, Etat de la Poesie Françoise p. 94. I have never had patience to look at the older writers who have treated this tiresome subject. It is a satisfaction to reflect, that the country which has produced more eminent and original poets than any other has never been infected by the fopperies of academies and their prizes. Such an institution as the Society degli Arcadi could at no time have endured public ridicule in England for a fortnight.

‡ Histoire Litt. des Troubadours, Paris 1774

rather superior. The troubadours chiefly confined themselves to subjects of love, or rather gallantry, and to satires (sirventes) which are sometimes keen and spirited. No romances of chivalry, and hardly any tales, are found among their works. There seems a general deficiency of imagination, and especially of that vivid description which distinguishes works of genius in the rudest period of society. In the poetry of sentiment, their favourite province, they seldom attain any natural expression, and consequently produce no interest. I speak, of course, on the presumption that the best specimens have been exhibited by those who have undertaken the task. It must be allowed, however, that we cannot judge of the troubadours at a greater disadvantage than through the prose translations of Millot. Their poetry was entirely of that class which is allied to music, and excites the fancy or feelings rather by the power of sound than any stimulancy of imagery and passion. Possessing a flexible and harmonious language, they invented a variety of metrical arrangements, perfectly new to the nations of Europe. The Latin hymns were striking, but monotonous, the metre of the northern French unvaried; but in Provençal poetry almost every length of verse, from two syllables to twelve, and the most intricate disposition of rhymes, were at the choice of the troubadour. The canzoni, the sestine, all the lyric metres of Italy and Spain, were borrowed from his treasury. With such a command of poetical sounds, it was natural that he should inspire delight into ears not yet rendered familiar to the artifices of verse; and even now the fragments of these ancient lays, quoted by M. Sismondi and M. Ginguené, seem to possess a sort of charm that has evaporated in translation. Upon this harmony, and upon the facility with which mankind are apt to be deluded into an admiration of exaggerated sentiment in poetry, they depended for their influence. And, however vapid the songs of Provence may seem to our apprehensions, they were undoubtedly the source from which poetry for many centuries derived a great portion of its habitual language.*

It has been maintained by some antiquaries that the northern romance, or what we properly call French, was not formed until the tenth century, the common dialect of all France having previously resembled that of Languedoc. This hypothesis may not be indisputable; but the question is not likely to be settled, as scarcely any written specimens of romance, even of that age, have survived.* In the eleventh century, among other more obscure productions both in prose and metre, there appears what, if unquestioned as to authenticity, would be a valuable monument of this language; the laws of William the Conqueror These are preserved in a manuscript of Ingulfus's History of Croyland, a blank being left in other copies where they should be inserted.† They are written in an idiom so far removed from the Provençal, that one would be disposed to think the separation between these two species of romance of older standing than is commonly allowed. But it has been thought probable that these laws, which in fact were a mere repetition of those of Edward the Confessor, were originally published in Anglo-Saxon, the only language intelligible to the people, and translated, at a subsequent period by some Norman monk into French.‡ This, indeed, is not quite satisfactory, as it would have been more natural for such a transcriber to have rendered them into Latin; and neither William nor his successors were accustomed to promulgate any of their ordinances in the vernacular language of England.

Northern French poetry and prose.

* Two very modern French writers, M. Ginguené (Histoire Littéraire d'Italie, Paris, 1811) and M. Sismondi (Littérature du Midi de l'Europe, Paris, 1813) have revived the poetical history of the troubadours. To them, still more than to Millot and Tiraboschi, I would acknowledge my obligations for the little I have learned in respect of this forgotten school of poetry. Notwithstanding, however, the heaviness of Millot's work, a fault not imputable to himself, though Ritson, as I remember, calls him, in his own polite style, "a blockhead," it will always be useful to the inquirer into the manners and opinions of the middle ages, from the numerous illustrations it contains of two general facts; the extreme dissolueness of morals among the higher ranks, and the prevailing animosity of all classes against the clergy.

* Hist. Litt. de la France, t. vii., p. 58. Le Bœuf, according to these Benedictins, has published some poetical fragments of the tenth century; and they quote part of a charter as old as 940 in romance, p. 59. But that antiquary, in a memoir printed in the seventeenth volume of the Academy of Inscriptions, which throws more light on the infancy of the French language than any thing within my knowledge, says only that the earliest specimens of verse in the royal library are of the eleventh century *au plus tard*, p. 717. M de la Rue is said to have found some poems of the eleventh century in the British Museum.—Roquefort. Etat de la Poésie Françoise, p. 206. Le Bœuf's fragment may be found in this work, p. 379: it seems nearer to the Provençal than the French dialect.

† Gale, xv. Script., t. i., p. 88.

‡ Ritson's Dissertation on Romance, p. 66.

The use of a popular language became more common after the year 1100. Translations of some books of Scripture and acts of saints were made about that time, or even earlier, and there are French sermons of St. Bernard, from which extracts have been published, in the royal library at Paris.* In 1126, a charter was granted by Louis VI. to the city of Beauvais in French.† Metrical compositions are in general the first literature of a nation, and even if no distinct proof could be adduced, we might assume their existence before the twelfth century. There is, however, evidence, not to mention the fragments printed by Le Bœuf, of certain lives of saints translated into French verse by Thibault de Vernon, a canon of Rouen, before the middle of the preceding age. And we are told that Taillefer, a Norman minstrel, recited a song or romance on the deeds of Roland, before the army of his countrymen, at the battle of Hastings in 1066. Philip de Than, a Norman subject of Henry I., seems to be the earliest poet whose works as well as name have reached us, unless we admit a French translation of the work of one Marbode upon precious stones to be more ancient.‡ This de Than wrote a set of rules for computation of time, and an account of different calendars. A happy theme for inspiration, without doubt! Another performance of the same author is a treatise on birds and beasts, dedicated to Adelaide, queen of Henry I.§ But a more famous votary of the muses was Wace, a native of Jersey, who, about the beginning of Henry II.'s reign, turned Geoffrey of Monmouth's history into French metre. Besides this poem, called Le Brut d'Angleterre, he composed a series of metrical histories, containing the transactions of the dukes of Normandy, from Rollo, their great progenitor, who gave names to the Roman de Rou, down to his own age. Other productions are ascribed to Wace, who was at least a prolific versifier, and, if he seem to deserve no higher title at present, has a claim to indulgence, and even to esteem, as having far excelled his contemporaries, without any superior advantages of knowledge In emulation, however, of his fame, several Norman writers addicted themselves to composing chronicles, or devotional treatises in metre. The court of our Norman kings was to the early poets in the Langue d'Oil, what those of Arles and Toulouse were to the troubadours. Henry I. was fond enough of literature to obtain the surname of Beauclerc; Henry II. was more indisputably an encourager of poetry; and Richard I. has left compositions of his own in one or other (for the point is doubtful) of the two dialects spoken in France.*

If the poets of Normandy had never gone beyond historical and religious subjects, they would probably have had less claim to our attention than their brethren of Provence. But a different and far more interesting species of composition began to be cultivated in the latter part of the twelfth century. Without entering upon the controverted question as to the origin of romantic fictions, referred by one party to the Scandinavians, by a second to the Arabs, by others to the natives of Britany, it is manifest that the actual stories upon which one early and numerous class of romances was founded are related to the traditions of the last people. These are such as turn upon the fable of Arthur; for though we are not entitled to deny the existence of such a personage, his story seems chiefly the creation of Celtic vanity. Traditions current in Britany, though probably derived from this island, became the basis of Geoffrey of Monmouth's Latin prose, which, as has been seen, was transfused into French metre by Wace.† The vicinity of Normandy enabled its poets to enrich their narratives with other Armorican fictions, all relating to the heroes who had surrounded the table of the son of Uther. An

Norman romances and tales.

* Hist. Litt., t. ix., p. 149. Fabliaux par Barbazan, vol. i., p 9, edit. 1808. Mém. de l'Académie des Inscr., t. xv. and xvii., p. 714, &c.

† Mabillon speaks of this as the oldest French instrument he had seen. But the Benedictins quote some of the eleventh century.—Hist. Litt., t. vii., p. 59. This charter is supposed by the authors of Nouveau Traité de Diplomatique to be translated from the Latin, t. iv., p. 519. French charters, they say, are not common before the age of Louis IX.; and this is confirmed by those published in Martenne's Thesaurus Anecdotorum, which are very commonly in French from his reign, but hardly ever before.

‡ Ravalière Révol. de la Langue Françoise, p. 116, doubts the age of this translation.

§ Archæologia, vols xii. and xiii

* Millot says that Richard's sirventes (satirical songs) have appeared in French, as well as Provençal, but that the former is probably a translation. —Hist. des Troubadours, vol. i., p. 54. Yet I have met with no writer who quotes them in the latter language, and M. Ginguené, as well as Le Grand d'Aussy, consider Richard as a trouveur.

† This derivation of the romantic stories of Arthur, which Le Grand d'Aussy ridiculously attributes to the jealousy entertained by the English of the renown of Charlemagne, is stated in a very perspicuous and satisfactory manner by Mr. Ellis in his Specimens of Early English Metrical Romances

equally imaginary history of Charlemagne gave rise to a new family of romances. The authors of these fictions were called Trouveurs, a name obviously identical with that of Troubadours. But, except in name, there was no resemblance between the minstrels of the northern and southern dialects. The invention of one class was turned to description, that of the other to sentiment; the first were epic in their form and style, the latter almost always lyric We cannot perhaps give a better notion of their dissimilitude, than by saying that one school produced Chaucer, and the other Petrarch. Besides these romances of chivalry, the trouveurs displayed their powers of lively narration in comic tales or fabliaux (a name sometimes extended to the higher romance), which have aided the imagination of Boccace and La Fontaine. These compositions are certainly more entertaining than those of the troubadours; but, contrary to what I have said of the latter, they often gain by appearing in a modern dress. Their versification, which doubtless had its charm, when listened to around the hearth of an ancient castle, is very languid and prosaic, and suitable enough to the tedious prolixity into which the narrative is apt to fall; and though we find many sallies of that arch and sprightly simplicity which characterizes the old language of France as well as England, it requires, upon the whole, a factitious taste to relish these Norman tales, considered as poetry in the higher sense of the word, distinguished from metrical fiction.

A manner very different from that of the fabliaux was adopted in the Roman de la Rose. Roman de la Rose, begun by William de Loris about 1250, and completed by John de Meun half a century later. This poem, which contains about 16,000 lines in the usual octo-syllable verse, from which the early French writers seldom deviated, is an allegorical vision, wherein love, and the other passions or qualities connected with it, pass over the stage, without the intervention, I believe, of any less abstract personages. Though similar allegories were not unknown to the ancients, and, which is more to the purpose, may be found in other productions of the thirteenth century, none had been constructed so elaborately as that of the Roman de la Rose. Cold and tedious as we now consider this species of poetry, it originated in the creative power of imagination, and appealed to more refined feeling than the common metrical narratives could excite. This poem was highly popular in the middle ages, and became the source of those numerous allegories which had not ceased in the seventeenth century.

Roman de la Rose.

The French language was employed in prose as well as in metre. Indeed, it seems to have had almost an exclusive privilege in this respect. The language of Oil, says Dante, in his treatise on vulgar speech, prefers its claim to be ranked above those of Oc and Si (Provençal and Italian), on the ground that all translations or compositions in prose have been written therein, from its greater facility and grace: such as the books compiled from the Trojan and Roman stories, the delightful fables about Arthur, and many other works of history and science.* I have mentioned already the sermons of St. Bernard, and translations from Scripture. The laws of the kingdom of Jerusalem purport to have been drawn up immediately after the first crusade; and though their language has been materially altered, there seems no doubt that they were originally compiled in French.† Besides some charters, there are said to have been prose romances before the year 1200.‡ Early in the next age, Ville Hordouin, seneschal of Champagne, recorded the capture of Constantinople in the fourth crusade, an expedition, the glory and reward of which he had personally shared, and, as every original work of prior date has either perished, or is of small importance, may be deemed the father of French prose. The establishments of St. Louis, and the law treatise of Beau-

Works in French prose.

* Prose e Rime di Dante, Venez, 1758, t. iv., p. 261. Dante's words, biblia cum Trojanorum Romanorumque gestibus compilata, seem to bear no other meaning than what I have given. But there may be a doubt whether *biblia* is ever used except for the Scriptures; and the Italian translator renders it, cioè la bibbia, i fatti de i Trojani, e de i Romani. In this case something is wrong in the original Latin, and Dante will have alluded to the translations of parts of Scripture made into French, as mentioned in the text.

† The Assises de Jérusalem have undergone two revisions; one in 1250, by order of John d'Ibelin, count of Jaffa, and a second in 1369, by sixteen commissioners chosen by the states of the kingdom of Cyprus. Their language seems to be such as might be expected from the time of the former revision.

‡ Several prose romances were written or translated from the Latin about 1170, and afterward. Mr. Ellis seems inclined to dispute their antiquity. But, besides the authorities of La Ravalière and Tressan, the latter of which is not worth much, a late very extensively informed writer seems to have put this matter out of doubt.—Roquefort Flamericourt, Etat de la Poésie Française dans les ..me et ..me siècles. Paris, 18.. p. 147

manoir, fill up the interval of the thirteenth century, and before its conclusion we must suppose the excellent memoirs of Joinville to have been composed, since they are dedicated to Louis X., in 1315, when the author could hardly be less than ninety years of age. Without prosecuting any farther the history of French literature, I will only mention the translations of Livy and Sallust, made in the reign and by the order of John, with those of Cesar, Suetonius, Ovid, and parts of Cicero, which are due to his successor Charles V.*

Spanish language. I confess myself wholly uninformed as to the original formation of the Spanish language, and as to the epoch of its separation into the two principal dialects of Castile and Portugal or Gallicia;† nor should I perhaps have alluded to the literature of that peninsula, were it not for a remarkable poem which shines out among the minor lights of those times. This is a metrical life of the Cid Ruy Diaz, written in a barbarous style and with the rudest inequality of measure, but with a truly Homeric warmth and vivacity of delineation. It is much to be regretted that the author's name has perished, but its date seems to be not later than the middle of the twelfth century, while the hero's actions were yet recent, and before the taste of Spain had been corrupted by the Provençal troubadours, whose extremely different manner would, if it did not pervert the poet's genius, at least have impeded his popularity. A very competent judge has pronounced the poem of the Cid to be "decidedly and beyond comparison the finest in the Spanish language." It is at least superior to any that was written in Europe before the appearance of Dante.*

Early writers in the Italian. A strange obscurity envelops the infancy of the Italian language. Though it is certain that grammatical Latin had ceased to be employed in ordinary discourse, at least from the time of Charlemagne, we have not a single passage of undisputed authenticity, in the current idiom, for nearly four centuries afterward. Though Italian phrases are mixed up in the barbarous jargon of some charters, not an instrument is extant in that language before the year 1200; unless we may reckon one in the Sardinian dialect (which, I believe, was rather Provençal than Italian), noticed by Muratori.† Nor is there a vestige of Italian poetry older than a few fragments of Ciullo d'Alcamo, a Sicilian, who must have written before 1193, since he mentions Saladin as then living.‡ This may strike us as the more remarkable, when we consider the political circumstances of Italy in the eleventh and twelfth centuries. From the struggles of her spirited republics against the emperors, and their internal factions, we might, upon all general reasoning, anticipate the early use and vigorous cultivation of their native language. Even if it were not yet ripe for historians and philosophers, it is strange that no poet should have been inspired with songs of triumph or invective by the various fortunes of his country. But, on the contrary, the poets of Lombardy became troubadours, and wasted their genius in Provençal love-strains at the courts of princes. The Milanese and other Lombard dialects were indeed exceedingly rude, but this rudeness separated them more decidedly from Latin; nor is it possible that the Lombards could have employed that language intelligibly for any public or domestic purpose. And indeed, in the earliest Italian compositions that

* Villaret, Hist. de France, t. xi., p. 121. De Sade, Vie de Pétrarque, t. iii., p. 548. Charles V. had more learning than most princes of his time. Christine de Pisan, a lady who has written memoirs, or rather a eulogy of him, says that his father le fist introdire en lettres moult suffisamment, et tant que competemment entendoit son Latin, et souffisamment scavoit les regles de graminaire; la quelle chose pleust a dieu qu' ainsi fust accoutumée entre les princes.—Collect. de Mém., t. v., p. 103, 190, &c.

† The earliest Spanish that I remember to have seen is an instrument in Martenne, Thesaurus Anecdotorum, t. i., p. 263; the date of which is 1095. Persons more conversant with the antiquities of that country may possibly go farther back. Another of 1101 is published in Marina's Teoria de las Cortes, t. iii., p. 1. It is in a Vidimus by Peter the Cruel, and cannot, I presume, have been a translation from the Latin. Yet the editors of Nouveau Tr. de Diplom. mention a charter of 1243 as the earliest they are acquainted with in the Spanish language, t. iv., p. 525.

Charters in the German language, according to the same work, first appear in the time of the Emperor Rodolph, after 1272 and became usual in the next century, p. 523. But Struvius mentions an instrument of 1235 as the earliest in German.—Corp. Hist. Germ., p. 457.

* An extract from this poem was published in 1808, by Mr. Southey, at the end of his "Chronicle of the Cid," the materials of which it partly supplied, accompanied by an excellent version by a gentleman, who is distinguished, among many other talents, for an unrivalled felicity in expressing the peculiar manner of authors whom he translates or imitates. M. Sismondi has given other passages, in the third volume of his essay on Southern Literature. This popular and elegant work contains some interesting and not very common information as to the early Spanish poets in the Provençal dialect, as well as those who wrote in Castilian.

† Dissert. 32. ‡ Tiraboschi, t. iv., p. 340

have been published, the new language is so thoroughly formed, that it is easy to infer a very long disuse of that from which it was derived. The Sicilians claim the glory of having first adapted their own harmonious dialect to poetry. Frederick II. both encouraged their art and cultivated it; among the very first essays of Italian verse we find his productions and those of his chancellor, Piero delle Vigne. Thus Italy was destined to owe the beginnings of her national literature to a foreigner and an enemy. These poems are very short and very few; those ascribed to St. Francis about the same time are hardly distinguishable from prose; but after the middle of the thirteenth century, the Tuscan poets awoke to a sense of the beauties which their native language, refined from the impurities of vulgar speech,* could display; and the genius of Italian literature was rocked upon the restless waves of the Florentine democracy. Ricordano Malespini, the first historian, and nearly the first prose writer in Italian, left memorials of the republic down to the year 1281, which was that of his death, and it was continued by Giacchetto Malespini to 1286. These are little inferior in purity of style to the best Tuscan authors; for it is the singular fate of that language to have spared itself all intermediate stages of refinement, and starting the last in the race, to have arrived almost instantaneously at the goal. There is an interval of not much more than half a century between the short fragment of Ciullo d'Alcamo, mentioned above, and the poems of Guido Guinizzelli, Guitone d'Arezzo, and Guido Cavalcante; which, in their diction and turn of thought, are sometimes not unworthy of Petrarch.†

But at the beginning of the next age arose a much greater genius, the true father of Italian poetry, and the first name in the literature of the middle ages. This was Dante, or Durante Alighieri, born in 1265, of a respectable family at Florence. Attached to the Guelf party, which had then obtained a final ascendency over its rival, he might justly promise himself the natural reward of talents under a free government, public trust, and the esteem of his compatriots. But the Guelfs unhappily were split into two factions, the Bianchi and the Neri, with the former of whom, and, as it proved, the unsuccessful side, Dante was connected. In 1300 he filled the office of one of the Priori, or chief magistrates at Florence; and having manifested in this, as was alleged, some partiality towards the Bianchi, a sentence of proscription passed against him about two years afterward, when it became the turn of the opposite faction to triumph. Banished from his country, and baffled in several efforts of his friends to restore their fortunes, he had no resource but at the courts of the Scalas at Verona, and other Italian princes, attaching himself in adversity to the Imperial interests, and tasting in his own language the bitterness of another's bread.* In this state of exile he finished, if he did not commence, his great poem, the Divine Comedy; a representation of the three kingdoms of futurity, Hell, Purgatory, and Paradise, divided into one hundred cantos, and containing about 14,000 lines. He died at Ravenna in 1321. Dante

Dante is among the very few who have created the national poetry of their country. For notwithstanding the polished elegance of some earlier Italian verse, it had been confined to amorous sentiments; and it was yet to be seen that the language could sustain for a

* Dante, in his treatise De vulgari Eloquentiâ, reckons fourteen or fifteen dialects, spoken in different parts of Italy, all of which were debased by impure modes of expression. But the "noble, principal, and courtly Italian idiom," was that which belonged to every city, and seemed to belong to none, and which, if Italy had a court, would be the language of that court, p. 274, 277.

Allowing for the metaphysical obscurity in which Dante chooses to envelop the subject, this might perhaps be said at present. The Florentine dialect has its peculiarities, which distinguish it from the general Italian language, though these are seldom discerned by foreigners, nor always by natives, with whom Tuscan is the proper denomination of their national tongue.

† Tiraboschi, t. iv., p. 309-377. Ginguené, vol. i., c. 6. The style of the Vita Nuova of Dante, written soon after the death of his Beatrice, which happened in 1290, is hardly distinguishable by a foreigner from that of Machiavel or Castiglione. Yet so recent was the adoption of this language, that the celebrated master of Dante, Brunetto Latini, had written his *Tesoro* in French; and gives as a reason for it, that it was a more agreeable and usual language than his own. Et se aucuns demandoit pourquoi chis livre est ecris en romans, selon la raison de France pour chose que nous sommes ytalien, je diroie que ch'est pour chose que nous sommes en France: l'autre pour chose *que la parleure en est plus delitable et plus commune a toutes gens.* There is said to be a manuscript history of Venice down to 1275, in the Florentine library, written in French by Martin de Canale, who says that he has chosen that language, parceque la langue francoise cort parmi le monde, et est la plus delitable a lire et a oir que nulle autre.—Ginguené, vol. i., p. 384.

* Tu proverai ci (says Cacciaguida to Dante) come sà di sale
Il pane altrui, e come è duro calle
Il scendere e 'l salir per altrui scale.
Paradis., cant. 16.

greater length than any existing poem except the Iliad, the varied style of narration, reasoning, and ornament. Of all writers he is the most unquestionably original. Virgil was indeed his inspiring genius, as he declares himself, and as may sometimes be perceived in his diction; but his tone is so peculiar and characteristic, that few readers would be willing at first to acknowledge any resemblance. He possessed, in an extraordinary degree, a command of language, the abuse of which led to his obscurity and licentious innovations. No poet ever excelled him in conciseness, and in the rare talent of finishing his pictures by a few bold touches; the merit of Pindar in his better hours. How prolix would the stories of Francesca or of Ugolino have become in the hands of Ariosto, or of Tasso, or of Ovid, or of Spenser! This excellence indeed is most striking in the first part of his poem. Having formed his plan so as to give an equal length to the three regions of his spiritual world, he found himself unable to vary the images of hope or beatitude, and the Paradise is a continual accumulation of descriptions, separately beautiful, but uniform and tedious. Though images derived from light and music are the most pleasing, and can be borne longer in poetry than any others, their sweetness palls upon the sense by frequent repetition, and we require the intermixture of sharper flavours. Yet there are detached passages of great excellence in this third part of Dante's poem; and even in the long theological discussions which occupy the greater proportion of its thirty-three cantos, it is impossible not to admire the enunciation of abstract positions with remarkable energy, conciseness, and sometimes perspicuity. The twelve first cantos of the Purgatory are an almost continual flow of soft and brilliant poetry. The seven last are also very splendid, but there is some heaviness in the intermediate parts. Fame has justly given the preference to the Inferno, which displays throughout a more vigorous and masterly conception; but the mind of Dante cannot be thoroughly appreciated without a perusal of his entire poem.

The most forced and unnatural turns, the most barbarous licenses of idiom, are found in this poet, whose power of expression is, at other times, so peculiarly happy. His style is indeed generally free from those conceits of thought which discredited the other poets of his country; but no sense is too remote for a word which he finds convenient for his measure or his rhyme. It seems indeed as if he never altered a line on account of the necessity of rhyme, but forced another or perhaps a third into company with it. For many of his faults no sufficient excuse can be made. But it is candid to remember, that Dante, writing almost in the infancy of a language which he contributed to create, was not to anticipate that words, which he borrowed from the Latin and from the provincial dialects, would by accident, or through the timidity of later writers, lose their place in the classical idiom of Italy. If Petrarch, Bembo, and a few more, had not aimed rather at purity than copiousness, the phrases which now appear barbarous, and are at least obsolete, might have been fixed by use in poetical language.

The great characteristic excellence of Dante is elevation of sentiment, to which his compressed diction and the emphatic cadences of his measure admirably correspond. We read him, not as an amusing poet, but as a master of moral wisdom, with reverence and awe. Fresh from the deep and serious, though somewhat barren studies of philosophy, and schooled in the severer discipline of experience, he has made of his poem a mirror of his mind and life, the register of his solicitudes and sorrows, and of the speculations in which he sought to escape their recollection. The banished magistrate of Florence, the disciple of Brunetto Latini, the statesman accustomed to trace the varying fluctuations of Italian faction, is for ever before our eyes. For this reason, even the prodigal display of erudition, which in an epic poem would be entirely misplaced, increases the respect we feel for the poet though it does not tend to the reader's gratification. Except Milton, he is much the most learned of all the great poets, and, relatively to his age, far more learned than Milton. In one so highly endowed by nature, and so consummate by instruction, we may well sympathize with a resentment which exile and poverty rendered perpetually fresh. The heart of Dante was naturally sensible, and even tender; his poetry is full of simple comparisons from rural life; and the sincerity of his early passion for Beatrice pierces through the vale of allegory which surrounds her. But the memory of his injuries pursues him into the immensity of eternal light;* and, in the com

* Paradiso, cant. 16.

pany of saints and angels, his unforgiving spirit darkens at the name of Florence.

This great poem was received in Italy with that enthusiastic admiration which attaches itself to works of genius only in ages too rude to listen to the envy of competitors or the fastidiousness of critics. Almost every library in that country contains manuscript copies of the Divine Comedy, and an account of those who have abridged or commented upon it would swell to a volume. It was thrice printed in the year 1472, and at least nine times within the fifteenth century. The city of Florence, in 1373, with a magnanimity which almost redeems her original injustice, appointed a public professor to read lectures upon Dante; and it was hardly less honourable to the poet's memory, that the first person selected for this office was Boccaccio. The universities of Pisa and Piacenza imitated this example; but it is probable that Dante's abstruse philosophy was often more regarded in their chairs than his higher excellences.* Italy indeed, and all Europe, had reason to be proud of such a master. Since Claudian, there had been seen for nine hundred years no considerable body of poetry, except the Spanish poem of the Cid, of which no one had heard beyond the peninsula, that could be said to pass mediocrity; and we must go much farther back than Claudian to find any one capable of being compared with Dante. His appearance made an epoch in the intellectual history of modern nations, and banished the discouraging suspicion which long ages of lethargy tended to excite, that nature had exhausted her fertility in the great poets of Greece and Rome. It was as if, at some of the ancient games, a stranger had appeared upon the plain, and thrown his quoit among the marks of former casts, which tradition had ascribed to the demigods. But the admiration of Dante, though it gave a general impulse to the human mind, did not produce imitators. I am unaware at least of any writer, in whatever language, who can be said to have followed the steps of Dante; I mean not so much in his subject as in the character of his genius and style. His orbit is still all his own, and the track of his wheels can never be confounded with that of a rival.†

In the same year that Dante was expelled from Florence, a notary, by name Petracco, was involved in a similar banishment. Retired to Arezzo, he there became the father of Francis Petrarch. This great man shared, of course, during his early years, in the adverse fortune of his family, which he was invincibly reluctant to restore, according to his father's wish, by the profession of jurisprudence. The strong bias of nature determined him to polite letters and poetry. These are seldom the fountains of wealth; yet they would perhaps have been such to Petrarch, if his temper could have borne the sacrifice of liberty for any worldly acquisitions. At the city of Avignon, where his parents had latterly resided, his graceful appearance and the reputation of his talents attracted one of the Colonna family, then bishop of Lombes in Gascony. In him, and in other members of that great house, never so illustrious as in the fourteenth century, he experienced the union of patronage and friendship. This, however, was not confined to the Colonnas. Unlike Dante, no poet was ever so liberally and sincerely encouraged by the great; nor did any, perhaps, ever carry to that perilous intercourse a spirit more irritably independent, or more free from interested adulation. He praised his friends lavishly, because he loved them ardently; but his temper was easily susceptible of offence, and there must have been much to tolerate in that restlessness and jealousy of reputation, which is perhaps the inevitable failing of a poet.* Petrarch

* Velli, Vita di Dante. Tiraboschi.

† The source from which Dante derived the scheme and general idea of his poem has been a subject of inquiry in Italy. To his original mind one might have thought the sixth Æneid would have suffice. But besides several legendary visions of the 12th and 13th centuries, it seems probable that he derived hints from the Tesoretto of his master in philosophical studies, Brunetto Latini.—Ginguené, t. ii., p. 8.

* There is an unpleasing proof of this quality in a letter to Boccaccio on Dante, whose merit he rather disingenuously extenuates; and whose popularity evidently stung him to the quick.—De Sade, t. iii., p. 512. Yet we judge so ill of ourselves, that Petrarch chose envy as the vice from which of all others he was most free. In his dialogue with St. Augustin, he says; Quicquid libuerit, dicito; modo me non accuses invidiæ. Aug. Utinam non tibi magis superbia quam invidia objicisset: nam hoc crimine, me judice, liber es.—De Contemptu Mundi, edit. 1581, p. 342.

I have read in some modern book, but know not where to seek the passage, that Petrarch did not intend to allude to Dante in the letter to Boccaccio mentioned above, but rather to Zanobi Strata, a contemporary Florentine poet, whom, however forgotten at present, the bad taste of a party in criticism preferred to himself.—Matteo Villani mentions them together as the two great ornaments of his age. This conjecture seems probable, for some expressions are not in the least applicable to Dante. But, whichever was intended, the letter equally shows the irritable humour of Petrarch.

But every thing was forgiven to a man who was the acknowledged boast of his age and country. Clement VI. conferred one or two sinecure benefices upon Petrarch, and would probably have raised him to a bishopric, if he had chosen to adopt the ecclesiastical profession. But he never took orders, the clerical tonsure being a sufficient qualification for holding canonries. The same pope even afforded him the post of apostolical secretary, and this was repeated by Innocent VI. I know not whether we should ascribe to magnanimity, or to a politic motive, the behaviour of Clement VI. towards Petrarch, who had pursued a course as vexatious as possible to the Holy See. For not only he made the residence of the supreme pontiffs at Avignon, and the vices of their court, the topic of invectives, too well founded to be despised, but he had ostentatiously put himself forward as the supporter of Nicola di Rienzi in a project which could evidently have no other aim than to wrest the city of Rome from the temporal sovereignty of its bishop. Nor was the friendship and society of Petrarch less courted by the most respectable Italian princes; by Robert, king of Naples, by the Visconti, the Correggi of Parma, the famous doge of Venice, Andrew Dandolo, and the Carrara family of Padua, under whose protection he spent the latter years of his life. Stories are related of the respect shown to him by men in humbler stations which are perhaps still more satisfactory.* But the most conspicuous testimony of public esteem was bestowed by the city of Rome, in his solemn coronation as laureate poet, in the capitol. This ceremony took place in 1341; and it is remarkable that Petrarch had at that time composed no works which could, in our estimation, give him pretensions to so singular an honour.

The moral character of Petrarch was formed of dispositions peculiarly calculated for a poet. An enthusiast in the emotions of love and friendship, of glory, of patriotism, of religion, he gave the rein to all their impulses; and there is not perhaps a page in his Italian writing which does not bear the trace of one or other of these affections. By far the most predominant, and that which has given the greatest celebrity to his name is his passion for Laura. Twenty years of unrequited and almost unaspiring love were lightened by song; and the attachment, which, having long survived the beauty of its object,* seems to have at one time nearly passed from the heart to the fancy, was changed to an intenser feeling, and to a sort of celestial adoration, by her death. Laura, before the time of Petrarch's first accidental meeting with her, was united in marriage with another; a fact which, besides some more particular evidence, appears to me deducible from the whole tenour of his poetry.† Such a passion is undoubtedly not capable of a moral defence; nor

* A goldsmith of Bergamo, by name Henry Capra, smitten with an enthusiastic love of letters and of Petrarch, earnestly requested the honour of a visit from the poet. The house of this good tradesman was full of representations of his person, and of inscriptions with his name and arms. No expense had been spared in copying all his works as they appeared. He was received by Capra with a princely magnificence, lodged in a chamber hung with purple, and a splendid bed on which no one before or after him was permitted to sleep. Goldsmiths, as we may judge by this instance, were opulent persons; yet the friends of Petrarch dissuaded him from this visit, as derogatory to his now elevated station.—De Sade, t. iii., p. 496.

* See the beautiful sonnet, Erano i capei d' oro all' aura sparsi. In a famous passage of his Confessions, he says: Corpus illud egregium morbis et crebris partubus exhaustum, multum pristini vigoris amisit. Those who maintain the virginity of Laura are forced to read *perturbationibus* instead of *partubus*. Two manuscripts in the royal library at Paris have the contraction *ptbus*, which leaves the matter open to controversy. De Sade contends that "crebris" is less applicable to "perturbationibus" than to "partubus." I do not know that there is much in this; but I am clear that corpus exhaustum partubus is much the more elegant Latin expression of the two.

† The Abbé de Sade, in those copious memoirs of the life of Petrarch, which illustrate in an agreeable though rather prolix manner the civil and literary history of Provence and Italy in the fourteenth century, endeavoured to establish his own descent from Laura, as the wife of Hugues de Sade, and born in the family de Noves. This hypothesis has since been received with general acquiescence by literary men; and Tiraboschi in particular, whose talent lay in these petty biographical researches, and who had a prejudice against every thing that came from France, seems to consider it as decisively proved. But it has been called in question in a modern publication by the late Lord Woodhouselee.—(Essay on the Life and Character of Petrarch, 1810.) I shall not offer any opinion as to the identity of Petrarch's mistress with Laura de Sade; but the main position of Lord W.'s essay, that Laura was an unmarried woman, and the object of an honourable attachment in her lover, seems irreconcilable with the evidence that his writings supply. 1. There is no passage in Petrarch, whether of poetry or prose, that alludes to the virgin character of Laura, or gives her the usual appellations of unmarried women, puella in Latin, or donzella in Italian; even in the Trionfo della Castità, where so obvious an opportunity occurred. Yet this was naturally to be expected from so ethereal an imagination as that of Petrarch, always inclined to invest her with the halo of celestial purity. We know how Milton took hold of the mystical notions of virginity; notions more congenial to the religion of Petrarch than his own:

would I seek its palliation so much in the prevalent manners of his age, by which, however, the conduct of even good men is generally not a little influenced, as in the infirmity of Petrarch's character, which induced him both to obey and to justify the emotions of his heart. The lady too, whose virtue and prudence we are not to question, seems to have tempered the light and shadow of her countenance so as to preserve her admirer from despair, and consequently to prolong his sufferings and servitude.

The general excellences of Petrarch are his command over the music of his native language, his correctness of style, scarcely two or three words that he has used having been rejected by later writers, his exquisite elegance of diction, improved by the perpetual study of Virgil; but, far above all, that tone of pure and melancholy sentiment, which has something in it unearthly, and forms a strong contrast to the amatory poems of antiquity. Most of these are either licentious or uninteresting; and those of Catullus, a man endowed by nature with deep and serious sensibility, and a poet, in my opinion, of greater and more varied genius than Petrarch, are contaminated, above all the rest, with the most degrading grossness. Of this there is not a single instance in the poet of Vaucluse; and his strains, diffused and admired as they have been, may have conferred a benefit that criticism cannot estimate, in giving elevation and refinement to the imaginations of youth. The great defect of Petrarch was his want of strong original conception, which prevented him from throwing off the affected and overstrained manner of the Provençal troubadours, and of the earlier Italian poets. Among his poems, the Triumphs are perhaps superior to the Odes, as the latter are to the Sonnets; and of the latter, those written subsequently to the death of Laura are in general the best. But that constrained and laborious measure cannot equal the graceful flow of the canzone, or the vigorous compression of the terza rima. The Triumphs have also a claim to superiority, as the only poetical composition of Petrarch that extends to any considerable length. They are in some degree, perhaps, an imitation of the dramatic Mysteries, and form at least the earliest specimens of a kind of poetry not uncommon in later times, wherein

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Quod tibi perpetuus pudor, et sine labe juventas
Pura fuit, quod nulla tori libata voluptas,
En etiam tibi virginei servantur honores.
Epitaphium Damonis.

2. The coldness of Laura towards so passionate and deserving a lover, if no insurmountable obstacle intervened during his twenty years of devotion, would be at least a mark that his attachment was misplaced, and show him in rather a ridiculous light. It is not surprising, that persons believing Laura to be unmarried, as seems to have been the case with the Italian commentators, should have thought his passion affected and little more than poetical. But, upon the contrary supposition, a thread runs through the whole of his poetry, and gives it consistency. A love on the one side, instantaneously conceived, and retained by the susceptibility of a tender heart and ardent fancy; nourished by slight encouragement, and seldom presuming to hope for more; a mixture of prudence and coquetry on the other, kept within bounds either by virtue or by the want of mutual attachment, yet not dissatisfied with fame more brilliant and flattery more refined than had ever before been the lot of woman—these are surely pretty natural circumstances, and such as do not render the story less intelligible. Unquestionably, such a passion is not innocent. But Lord Woodhouselee, who is so much scandalized at it, knew little, one would think, of the fourteenth century. His standard is taken not from Avignon, but from Edinburgh, a much better place, no doubt, and where the moral barometer stands at a very different altitude. In one passage, p. 188, he carries his strictness to an excess of prudery. From all we know of the age of Petrarch, the only matter of astonishment is the persevering virtue of Laura. The troubadours boast of much better success with Provençal ladies.

3. But the following passage from Petrarch's dialogues with St. Augustin, the work, as is well known, where he most unbosoms himself, will leave no doubt, I think, that his passion could not have been gratified consistently with honour. At mulier ista celebris, quam tibi certissimam ducem fingis, ad superos cur non hæsitantem trepidumque direxerit, et quod cæcis fieri solet, manu apprehensum non tenuit, quò et gradiendum foret admonuit?—Petr. Fecit hoc illa quantum potuit. Quid enim aliud egit, cum nullis mota precibus, nullis victa blanditiis, mulicbrem tenuit decorem, et ad versus suam semel et meam ætatem, adversus multa et varia, quæ flectere adamantium spiritum debuissent, inexpugnabilis et firma permansit? Profectò animus iste fœmineus quid virum decuit admonebat, præstabatque ne in sectando pudicitiæ studio, ut verbis utar Senecæ, aut exemplum aut convitium deesset; postremò cum lorifragum ac præcipitem videret, deserere maluit potius quàm sequi.—August. Turpe igitur aliquid interdum voluisti, quod supra negaveras. At iste vulgatus amantium, vel, ut dicam verius, amentium furor est, ut omnibus meritò dici possit: volo nolo, nolo volo. Vobis ipsis quid velitis, aut nolitis, ignotum est.—Petr. Invitus in laqueum offendi. Si quid tamen olim aliter forte voluissem, amor ætasque cogerunt; nunc quid velim et cupiam scio, firmavique jam tandem animum labentem; contra autem illa propositi tenax et semper una permansit, quare constantiam fœmineam quò magis intelligo, magis admiror: idque sibi consilium fuisse, si unquam debuit, gaudeo nunc et gratias ago.—Aug. Semel fallenti, non facile rursus fides habenda est: tu prius mores atque habitum, vitamque mutavisti, quàm animum mutâsse persuadeas; mitigatur forte si tuus leniturque ignis, extinctus non est. Tu verò qui tantum dilectioni tribuis, non animadvertis, illam absolvendo, quantum te ipse condemnas illam fateri libet fuisse sanctissimam, dum te insanum scelestumque fateare.—De Contemptu Mundi Dialog. 3, p. 367, edit. 1581.

real and allegorical personages are intermingled in a masque or scenic representation.

English language.

None of the principal modern languages was so late in its formation, or in its application to the purposes of literature, as the English. This arose, as is well known, out of the Saxon branch of the great Teutonic stock, spoken in England till after the conquest. From this mother dialect, our English differs less in respect of etymology, than of syntax, idiom, and flexion. In so gradual a transition as probably took place, and one so sparingly marked by any existing evidence, we cannot well assign a definite origin to our present language. The question of identity is almost as perplexing in languages as in individuals. But, in the reign of Henry II., a version of Wace's poem of Brut, by one Layamon, a priest of Ernly upon Severn, exhibits, as it were, the chrysalis of the English language, in which he can as little be said to have written, as in Anglo-Saxon.* Very soon afterward, the new formation was better developed; and some metrical pieces, referred by critics to the earlier part of the thirteenth century, differ but little from our legitimate grammar.† About the beginning of Edward I.'s reign, Robert, a monk of Glocester, composed a metrical chronicle from the history of Geoffrey of Monmouth, which he continued to his own time. This work, with a similar chronicle of Robert Manning, a monk of Brunne (Bourne) in Lincolnshire, nearly thirty years later, stand at the head of our English poetry. The romance of Sir Tristrem, ascribed to Thomas of Erceldoune, surnamed the Rhymer, a Scottish minstrel, has recently laid claim to somewhat higher antiquity. In the fourteenth century, a great number of metrical romances were translated from the French. It requires no small portion of indulgence to speak favourably of any of these early English productions. A poetical line may no doubt occasionally be found; but in general the narration is as heavy and prolix as the versification is unmusical.‡

Early writers.

The first English writer who can be read with approbation is William Langland, the author of Piers Plowman's Vision, a severe satire upon the clergy. Though his measure is more uncouth than that of his predecessors, there is real energy in his conceptions which he caught not from the chimeras of knight-errantry, but the actual manners and opinions of his time.

Cause of its slow progress.

The very slow progress of the English language, as an instrument of literature, is chiefly to be ascribed to the effects of the Norman conquest, in degrading the native inhabitants, and transferring all power and riches to foreigners. The barons, without perhaps one exception, and a large proportion of the gentry, were of French descent, and preserved among themselves the speech of their fathers. This continued much longer than we should naturally have expected; even after the loss of Normandy had snapped the thread of French connexions, and they began to pride themselves in the name of Englishmen, and in the inheritance of traditionary English privileges. Robert of Glocester has a remarkable passage, which proves that, in his time, somewhere about 1270, the superior ranks continued to use the French language.* Ralph Higden, about the early part of Edward III.'s reign, though his expressions do not go the same length, asserts, that "gentlemen's children are taught to speak French from the time they are rocked in their cradle; and uplandish (country) or inferior men will liken themselves to gentlemen, and learn with great business for to speak French, for to be the more told of." Notwithstanding, however, this predominance of French among the higher class, I do not think that some modern critics are warranted in concluding that they were in general ignorant of the English tongue. Men living upon their estates among their tenantry, whom they welcomed in their halls, and whose assistance they were perpetually needing in war and civil frays, would hardly have permitted such a barrier to obstruct their intercourse. For we cannot, at

* A sufficient extract from this work of Layamon has been published by Mr. Ellis, in his specimens of early English poetry, vol. i., p. 61. It contains, he observes, no word which we are under the necessity of ascribing to a French origin.

† Warton's Hist. of English Poetry. Ellis's Specimens.

‡ Warton printed copious extracts from some of these. Ritson gave several of them entire to the press. And Mr. Ellis has adopted the only plan which could render them palatable, by intermingling short passages, where the original is rather above its usual mediocrity with his own lively analysis.

* The evidences of this general employment and gradual disuse of French in conversation and writing are collected by Tyrwhitt, in a dissertation on the ancient English language, prefixed to the fourth volume of his edition of Chaucer's Canterbury Tales; and by Ritson, in the preface to his Metrical Romances, vol. i., p. 70.

the utmost, presume that French was so well known to the English commonalty in the thirteenth century, as English is at present to the same class in Wales and the Scottish Highlands. It may be remarked, also, that the institution of trial by jury must have rendered a knowledge of English almost indispensable to those who administered justice. There is a proclamation of Edward I. in Rymer, where he endeavours to excite his subjects against the King of France by imputing to him the intention of conquering the country, and abolishing the English language (linguam delere anglicanam), and this is frequently repeated in the proclamations of Edward III.* In his time, or perhaps a little before, the native language had become more familiar than French in common use, even with the court and nobility. Hence the numerous translations of metrical romances, which are chiefly referred to his reign. An important change was effected in 1362, by a statute, which enacts that all pleas in courts of justice shall be pleaded, debated, and judged in English. But Latin was, by this act, to be employed in drawing the record; for there seems to have still continued a sort of prejudice against the use of English as a written language. The earliest English instrument known to exist is said to bear the date of 1343.† And there are not more than three or four entries in our own tongue upon the rolls of parliament before the reign of Henry VI., after whose accession its use becomes very common. Sir John Mandevile, about 1350, may pass for the father of English prose, no original work being so ancient as his travels. But the translation of the Bible and other writings by Wicliffe nearly thirty years afterward, taught us the copiousness and energy of which our native dialect was capable; and it was employed in the fifteenth century by two writers of distinguished merit, Bishop Peacock and Sir John Fortescue.

Chaucer.

But the principal ornament of our English literature was Geoffrey Chaucer, who, with Dante and Petrarch, fills up the triumvirate of great poets in the middle ages. Chaucer was born in 1328, and his life extended to the last year of the fourteenth century. That rude and ignorant generation was not likely to feel the admiration of native genius as warmly as the compatriots of Petrarch; but he enjoyed the favour of Edward III., and, still more conspicuously of John, duke of Lancaster; his fortunes were far more prosperous than have usually been the lot of poets; and a reputation was established beyond competition in his lifetime, from which no succeeding generation has withheld its sanction. I cannot, in my own taste, go completely along with the eulogies that some have bestowed upon Chaucer, who seems to me to have wanted grandeur, where he is original, both in conception and in language. But in vivacity of imagination and ease of expression, he is above all poets of the middle time, and comparable perhaps to the greatest of those who have followed. He invented, or rather introduced from France, and employed with facility the regular iambic couplet; and though it was not to be expected that he should perceive the capacities latent in that measure, his versification, to which he accommodated a very licentious and arbitrary pronunciation, is uniform and harmonious.* It is chiefly, indeed, as a comic poet, and a minute observer of manners and circumstances, that Chaucer excels. In serious and moral poetry he is frequently languid and diffuse; but he springs like Antæus from the earth, when his subject changes to coarse satire or merry narrative. Among his more elevated compositions, the Knight's Tale is abundantly sufficient to immortalize Chaucer, since it would be difficult to find anywhere a story better conducted, or told with more animation and strength of fancy. The second place may be given to his Troilus and Cresceide, a beautiful and interesting poem though enfeebled by expansion. But perhaps the most eminent, or at any rate the most characteristic, testimony to his genius will be found in the prologue to his Canterbury Tales; a work entirely and exclusively his own, which can seldom be said of his poetry, and the vivid delineations of which perhaps very few writers but Shakspeare could have equalled. As the first original English poet, if we except Langland, as the inventor of our most approved measure, as an improver, though with too much innovation, of our language, and as a faithful witness to the manners of his age, Chaucer would deserve our reverence, if he had not also

* T. v., p. 490; t. vi., p. 642, et alibi.

† Ritson, p 80 There is one in Rymer of the year 1385.

* See Tyrwhitt's essay on the language and versification of Chaucer, in the fourth volume of his edition of the Canterbury Tales. The opinion of this eminent critic has lately been controverted by Dr. Nott, who maintains the versification of Chaucer to have been wholly founded on accentual and not syllabic regularity.

intrinsic claims for excellences which do not depend upon any collateral considerations.

Revival of ancient learning

The last circumstance which I shall mention as having contributed to restore society from the intellectual degradation into which it had fallen during the dark ages, is the revival of classical learning. The Latin language indeed, in which all legal instruments were drawn up, and of which all ecclesiastics availed themselves in their epistolary intercourse, as well as in their more solemn proceedings, had never ceased to be familiar. Though many solecisms and barbarous words occur in the writings of what were called learned men, they possessed a fluency of expression in Latin which does not often occur at present. During the dark ages, however, properly so called, or the period from the sixth to the eleventh century, it is unusual to meet with quotations, except from the Vulgate or from theological writers. The study of Rome's greatest authors, especially her poets, was almost forbidden. But a change took place in the course of the twelfth century. The polite literature, as well as the abstruser science of antiquity, became the subject of cultivation. Several writers of that age, in different parts of Europe, are distinguished more or less for elegance, though not absolute purity, of Latin style; and for their acquaintance with those ancients who are its principal models. Such were John of Salisbury, the acute and learned author of the Policraticus, William of Malmsbury, Giraldus Cambrensis, Roger Hoveden, in England; and in foreign countries, Otho of Frisingen, Saxo Grammaticus, and the best perhaps of all I have named as to style, Falcandus, the historian of Sicily. In these we meet with frequent quotations from Livy, Cicero, Pliny, and other considerable writers of antiquity. The poets were now admired, and even imitated. All metrical Latin before the latter part of the twelfth century, so far as I have seen, is extremely bad; but at this time, and early in the succeeding age, there appeared several versifiers, who aspired to the renown of following the steps of Virgil and Statius in epic poetry. Joseph Iscanus, an Englishman, seems to have been the earliest of these; his poem on the Trojan war, containing an addres to Henry II. He wrote another, entitled Antiochus, on the third crusade, most of which has perished. The wars of Frederick Barbarossa were celebrated by Gunther in his Ligurinus; and not long afterward, Guillelmus Brito wrote the Philippis, in honour of Philip Augustus, and Walter de Chatillon the Alexandreis, taken from the popular romance of Alexander. None of these poems, I believe, have much intrinsic merit; but their existence is a proof of taste that could relish, though not of genius that could emulate antiquity.*

In the twelfth century.

In the thirteenth century there seems to have been some decline of classical literature, in consequence probably of the scholastic philosophy, which was then in its greatest vigour; at least we do not find so many good writers as in the preceding age. But about the middle of the fourteenth, or perhaps a little sooner, an ardent zeal for the restoration of ancient learning began to display itself. The copying of books, for some ages slowly and sparingly performed in monasteries, had already become a branch of trade;† and their price was consequently reduced. Tiraboschi denies that the invention of making paper from linen rags is older than the middle

much more in the fourteenth.

Invention of linen paper.

* Warton's Hist. of English Poetry, vol. i., Dissertation II. Roquefort, Etat de la Poésie Française du douziéme Siècle, p. 18. The following lines from the beginning of the eighth book of the Philippis seem a fair, or rather a favourable specimen of these epics. But I am very superficially acquainted with any of them.

Solverat interea zephyris melioribus annum
Frigore depulso veris tepor, et renovari
Cœperat et viridi gremio juvenescere tellus;
Cum Rea læta Jovis rideret ad oscula mater
Cum jam post tergum Phryxi vectore relicto
Solis Agenorei premeret rota terga juvenci.

The tragedy of Eccerinus (Eccelin da Romano), by Albertinus Mussatus, a Paduan, and author of a respectable history, deserves some attention, as the first attempt to revive the regular tragedy. It was written soon after 1300. The language by no means wants animation, notwithstanding an unskilful conduct of the fable. The Eccerinus is printed in the tenth volume of Muratori's collection.

† Booksellers appear in the latter part of the twelfth century. Peter of Blois mentions a lawbook which he had procured a quodam publico mangone librorum.—Hist. Littéraire de la France, t. ix., p. 84. In the thirteenth century there were many copyists by occupation in the Italian universities.—Tiraboschi, t. iv., p. 72. The number of these at Milan before the end of that age is said to have been fifty, ibid. But a very small proportion of their labour could have been devoted to purposes merely literary. By a variety of ordinances, the first of which bears date in 1275, the booksellers of Paris were subjected to the control of the university.—Crevier, t. ii., p. 67, 286. The pretext of this was, lest erroneous copies should obtain circulation. And this appears to have been the original of those restraints upon the freedom of publication, which, since the invention of printing, have so much retarded the diffusion of truth by means of that great instrument.

of that century; and although doubts may be justly entertained as to the accuracy of this position, yet the confidence with which so eminent a scholar advances it is at least a proof that paper manuscripts of an earlier date are very rare.* Princes became far more attentive to literature when it was no longer confined to metaphysical theology and canon law. I have already mentioned the translations from classical authors, made by command of John and Charles V. of France. These French translations diffused some acquaintance with ancient history and learning among our own countrymen.† The public libraries assumed a more respectable appearance. Louis IX. had formed one at Paris, in which it does not appear that any work of elegant literature was found.‡ At the beginning of the fourteenth century, only four classical manuscripts existed in this collection; of Cicero, Ovid, Lucan, and Boethius.§ The academical library of Oxford, in 1300, consisted of a few tracts kept in chests under St. Mary's church. That of Glastonbury Abbey, in 1240, contained four hundred volumes, among which were Livy, Sallust, Lucan, Virgil, Claudian, and other ancient writers.* But no other, probably, of that age was so numerous or so valuable. Richard of Bury, the chancellor of England, and Edward III., spared no expense in collecting a library, the first perhaps that any private man had formed. But the scarcity of valuable books was still so great, that he gave the abbot of St. Alban's fifty pounds weight of silver for between thirty and forty volumes.† Charles V increased the royal library at Paris to nine hundred volumes, which the Duke of Bedford purchased and transported to London.‡ His brother Humphrey, duke of Glocester, presented the university of Oxford with six hundred books, which seem to have been of extraordinary value, one hundred and twenty of them having been estimated at one thousand pounds. This indeed was in 1440, at which time such a library would not have been thought remarkably numerous beyond the Alps,§ but England had made comparatively little progress in learning. Germany, however, was probably still less advanced. Louis, Elector Palatine, bequeathed in 1421 his library to the university of Heidelberg, consisting of one hundred and fifty-two volumes. Eighty-nine of these related to theology, twelve

Libraries.

* Tiraboschi, t. v., p. 85. On the contrary side are Montfaucon, Mabillon, and Muratori; the latter of whom carries up the invention of our ordinary paper to the year 1000. But Tiraboschi contends that the paper used in manuscripts of so early an age was made from cotton rags, and, apparently, from the inferior durability of that material, not frequently employed. The editors of Nouveau Traité de Diplomatique are of the same opinion, and doubt the use of linen paper before the year 1300, t. i., p. 517, 521. Meerman, well known as a writer upon the antiquities of printing, offered a reward for the earliest manuscript upon linen paper, and, in a treatise upon the subject, fixed the date of its invention between 1270 and 1300. But M. Schwandner, of Vienna, is said to have found in the imperial library a small charter bearing the date of 1243 on such paper.—Macpherson's Annals of Commerce, vol. i., p. 394. Tiraboschi, if he had known this, would probably have maintained the paper to be made of cotton, which he says it is difficult to distinguish. He assigns the invention of linen paper to Pace da Fabiano of Treviso. But more than one Arabian writer asserts the manufacture of linen paper to have been carried on at Samarcand early in the eighth century, having been brought thither from China. And, what is more conclusive, Casiri positively declares many manuscripts in the Escurial of the eleventh and twelfth centuries to be written on that substance.—Bibliotheca Arabico-Hispanica, t. ii., p 9. This authority appears much to outweigh the opinion of Tiraboschi in favour of Pace da Fabiano, who must perhaps take his place at the table of fabulous heroes with Bartholomew Schwartz and Flavio Gioja. But the material point, that paper was very little known in Europe till the latter part of the fourteenth century, remains as before.

† Warton's Hist. of English Poetry, vol ii., p. 122.

‡ Velly, t. v., p. 202. Crevier, t. ii., p. 36.

§ Warton, vol. i., Dissert. II

* Warton, vol. i., Dissert. II.

† Ibid. Fifty-eight books were transcribed in this abbey under one abbot, about the year 1300 Every considerable monastery had a room, called Scriptorium, where this work was performed. More than eighty were transcribed at St. Albans under Whethamstede, in the time of Henry VI., ibid. See also Du Cange, v. Scriptores. Nevertheless we must remember, first, that the far greater part of these books were mere monastic trash, or at least useless in our modern apprehension; secondly, that it depended upon the character of the abbot whether the scriptorium should be occupied or not. Every head of a monastery was not a Whethamstede. Ignorance and jollity, such as we find in Bolton Abbey, were their more usual characteristics. By the account-books of this rich monastery, about the beginning of the fourteenth century, three books only appear to have been purchased in forty years. One of those was the Liber Sententiarum of Peter Lombard, which cost thirty shillings, equivalent to near forty pounds at present.—Whitaker's Hist. of Craven p. 330.

‡ Ibid. Villaret, t. xi., p. 117.

§ Niccolo Niccoli, a private scholar, who contributed essentially to the restoration of ancient learning, bequeathed a library of eight hundred volumes to the republic of Florence. This Niccoli hardly published any thing of his own; but earned a well-merited reputation by copying and correcting manuscripts.—Tiraboschi, t. vi., p. 114. Shepherd's Poggio, p. 319. In the preceding century Coluccio Salutato had procured as many as eight hundred volumes, ibid. p. 32. Roscoe's Lorenzo de' Medici p. 55.

to canon and civil law, forty five to medicine, and six to philosophy.*

Transcription of manuscripts.

Those who first undertook to lay open the stores of ancient learning found incredible difficulties from the scarcity of manuscripts. So gross and supine was the ignorance of the monks, within whose walls these treasures were concealed, that it was impossible to ascertain, except by indefatigable researches, the extent of what had been saved out of the great shipwreck of antiquity. To this inquiry Petrarch devoted continual attention. He spared no pains to preserve the remains of authors, who were perishing from neglect and time. This danger was by no means past in the fourteenth century. A treatise of Cicero upon Glory, which had been in his possession, was afterward irretrievably lost.† He declares that he had seen in his youth the works of Varro; but all his endeavours to recover these and the second Decad of Livy were fruitless. He found, however, Quintilian, in 1350, of which there was no copy in Italy.‡ Boccaccio, and a man of less general fame, Colluccio Salutato, were distinguished in the same honourable task. The diligence of these scholars was not confined to searching for manuscripts. Transcribed by slovenly monks, or by ignorant persons who made copies for sale, they required the continual emendation of accurate critics.§ Though much certainly was left for the more enlightened sagacity of later times, we owe the first intelligible text of the Latin classics to Petrarch, Poggio, and their contemporary labourers in this vineyard for a hundred years before the invention of printing.

Industry of the fifteenth century.

What Petrarch began in the fourteenth century was carried on by a new generation with unabating industry. The whole lives of Italian scholars in the fifteenth century were devoted to the recovery of manuscripts and the revival of philology. For this they sacrificed their native language, which had made such surprising shoots in the preceding age, and were content to trace, in humble reverence, the footsteps of antiquity. For this too they lost the hope of permanent glory, which can never remain with imitators, or such as trim the lamp of ancient sepulchres. No writer perhaps of the fifteenth century, except Politian, can aspire at present even to the second class, in a just marshalling of literary reputation. But we owe them our respect and gratitude for their taste and diligence. The discovery of an unknown manuscript, says Tiraboschi, was regarded almost as the conquest of a kingdom. The classical writers, he adds, were chiefly either found in Italy, or at least by Italians; they were first amended and first printed in Italy, and in Italy they were first collected in public libraries.* This is subject to some exception when fairly considered; several ancient authors were never lost, and therefore cannot be said to have been discovered; and we know that Italy did not always anticipate other countries in classical printing. But her superior merit is incontestable. Poggio Bracciolini, who stands perhaps at the head of the restorers of learning in the earlier part of the fifteenth century, discovered in the monastery of St. Gall, among dirt and rubbish, in a dungeon scarcely fit for condemned criminals, as he describes it, an entire copy of Quintilian, and part of Valerius Flaccus. This was in 1414; and soon afterward he rescued the poem of Silius Italicus, and twelve comedies of Plautus, in addition to eight that were previously known; besides Lucretius, Columella Tertullian, Ammianus Marcellinus, and other writers of inferior note.† A bishop of Lodi brought to light the rhetorical treatises of Cicero. Not that we must suppose these books to have been universally unknown before; Quintilian, at least, is quoted by English writers much earlier. But so little intercourse prevailed among different countries, and the monks had so little acquaintance with the riches of their conventual libraries, that an author might pass for lost in Italy, who was familiar to a few learned men in other parts of Europe. To the name of Poggio we may add a number of others, distinguished in this memorable resurrection of ancient literature, and united, not always indeed by friendship, for their bitter animosities disgrace their profession, but by a sort of common sympathy in the cause of learning; Filelfo, Laurentius Valla, Niccolo Niccoli, Ambrogio Traversari, more commonly called Il Camaldolense, and Leonardo Aretino.

Poggio.

From the subversion of the Western

* Schmidt, Hist. des Allemands, t. v., p. 520.

† He had lent it to a needy man of letters, who pawned the book, which was never recovered.—De Sade, t. i., p. 57.

‡ Tiraboschi, p. 89.

§ Idem, t. v., p. 83. De Sade, t. i., p. 88.

* Tiraboschi, p. 101.

† Idem, t. vi., p. 104; and Shepherd's Life of Poggio, p. 106, 110. Roscoe's Lorenzo de' Medici, p. 38.

Greek language unknown in the west.

Empire, or at least from the time when Rome ceased to pay obedience to the exarchs of Ravenna, the Greek language and literature had been almost entirely forgotten within the pale of the Latin church. A very few exceptions might be found, especially in the earlier period of the middle ages, while the Eastern emperors retained their dominion over part of Italy.* Thus Charlemagne is said to have established a school for Greek at Osnaburg.† John Scotus seems to have been well acquainted with the language. And Greek characters may occasionally, though very seldom, be found in the writings of learned men; such as Lanfranc or William of Malmsbury.‡ It is said that Roger Bacon understood Greek; and his eminent contemporary, Robert Grosseteste, bishop of Lincoln, had a sufficient intimacy with it to write animadversions upon Suidas. Since Greek was spoken with considerable purity by the noble and well educated natives of Constantinople, we may wonder that, even as a living language, it was not better known by the western nations, and especially in so neighbouring a nation as Italy. Yet here the ignorance was perhaps even more complete than in France or England. In some parts indeed of Calabria, which had been subject to the eastern empire till near the year 1100, the liturgy was still performed in Greek, and a considerable acquaintance with the language was of course preserved. But for the scholars of Italy, Boccaccio positively asserts, that no one understood so much as the Greek characters.* Nor is there probably a single line quoted from any poet in that language from the sixth to the fourteenth century.

Its study revives in the fourteenth century.

The first to lead the way in restoring Grecian learning in Europe were the same men who had revived the kindred muses of Latium, Petrarca and Boccaccio. Barlaam, a Calabrian by birth, during an embassy from the court of Constantinople in 1335, was persuaded to become the preceptor of the former, with whom he read the works of Plato.† Leontius Pilatus, a native of Thessalonica, was encouraged some years afterward by Boccaccio to give public lectures upon Homer at Florence.‡ Whatever might be the share of general attention that he excited, he had the honour of instructing both these great Italians in his native language. Neither of them perhaps reached an advanced degree of proficiency; but they bathed their lips in the fountain, and enjoyed the pride of being the first who paid the homage of a new posterity to the father of poetry. For some time little fruit apparently resulted from their example; but Italy had imbibed the desire of acquisitions in a new sphere of knowledge, which, after some interval, she was abundantly enabled to realize. A few years before the termination of the fourteenth century,

* Schmidt, Hist. des Allemands, t. ii., p. 374. Tiraboschi, t. iii., p. 124, et alibi. Bede extols Theodore, primate of Canterbury, and Tobias, bishop of Rochester, for their knowledge of Greek.—Hist. Eccles., c. 9 and 24. But the former of these prelates, if not the latter, was a native of Greece.

† Hist. Littéraire de la France, t. iv., p. 12.

‡ Greek characters are found in a charter of 943, published in Martenne, Thesaurus Anecdot., t. i., p. 74. The title of a treatise, περι φυσεων μερισμου, and the word θεοτοκος, occur in William of Malmsbury, and one or two others in Lanfranc's Constitutions. It is said that a Greek psalter was written in an abbey at Tournay about 1105.—Hist. Litt. de la France, t. ix., p. 102. This was, I should think, a very rare instance of a Greek manuscript, sacred or profane, copied in the western parts of Europe before the fifteenth century. But a Greek psalter, written in Latin characters at Milan in the ninth century, was sold some years ago in London. John of Salisbury is said by Crevier to have known a little Greek, and he several times uses technical words in that language. Yet he could not have been much more learned than his neighbours; since having found the word ωσια in St. Ambrose, he was forced to ask the meaning of one John Sarasin, an Englishman, because, says he, none of our masters here (at Paris) understand Greek. Paris, indeed, Crevier thinks, could not furnish any Greek scholar in that age except Abelard and Heloise, and probably neither of them knew much.—Hist. de l'Univers. de Paris, t. i., p. 259.

The ecclesiastical language, it may be observed, was full of Greek words Latinized. But this process had taken place before the fifth century; and most of them will be found in the Latin dictionaries. A Greek word was now and then borrowed, as more imposing than the correspondent Latin. Thus the English and other kings sometimes called themselves Basileus instead of Rex

It will not be supposed that I have professed to enumerate all the persons of whose acquaintance with the Greek tongue some evidence may be found; nor have I ever directed my attention to the subject with that view. Doubtless the list might be more than doubled. But, if ten times the number could be found, we should still be entitled to say that the language was almost unknown, and that it could have had no influence on the condition of literature.

* Nemo est qui Græcas literas nôrit; at ego in hoc Latinitati compatior, quæ sic omnino Græca abjecit studia, ut etiam non noscamus characteres literarum.—Genealogiæ Deorum, apud Hodium de Græcis Illustribus, p. 3.

† Mém. de Pétrarque, t. i., p. 407.

‡ Idem, t. i., p. 447; t. iii., p. 634. Hody, de Græcis Illust., p. 2. Boccace speaks modestly of his own attainments in Greek; etsi non satis plenè perceperim, percepi tamen quantum potui nec dubium, si permansisset homo ille vagus citius penes nos, quin plenius percepissem, id p

Emanuel Chrysoloras, whom the Emperor John Palæologus had previously sent into Italy, and even as far as England, upon one of those unavailing embassies by which the Byzantine court strove to obtain sympathy and succour from Europe, returned to Florence as a public teacher of Grecian literature.* His school was afterward removed successively to Pavia, Venice, and Rome; and during nearly twenty years that he taught in Italy, most of those eminent scholars whom I have already named, and who distinguish the first half of that century, derived from his instruction their knowledge of the Greek tongue. Some, not content with being the disciples of Chrysoloras, betook themselves to the source of that literature at Constantinople; and returned to Italy not only with a more accurate insight into the Greek idiom than they could have attained at home, but with copious treasures of manuscripts, few, if any, of which probably existed previously in Italy, where none had ability to read or value them; so that the principal authors of Grecian antiquity may be considered as brought to light by these inquiries, the most celebrated of whom are Guarino of Verona, Aurispa, and Filelfo. The second of these brought home to Venice in 1423 not less than two hundred and thirty-eight volumes.†

State of learning in Greece.

The fall of that eastern empire, which had so long outlived all other pretensions to respect that it scarcely retained that founded upon its antiquity, seems to have been providentially delayed till Italy was ripe to nourish the scattered seeds of literature that would have perished a few ages earlier in the common catastrophe. From the commencement of the fifteenth century, even the national pride of Greece could not blind her to the signs of approaching ruin. It was no longer possible to inspire the European republic, distracted by wars and restrained by calculating policy, with the generous fanaticism of the crusades; and at the council of Florence, in 1439, the court and church of Constantinople had the mortification of sacrificing their long-cherished faith, without experiencing any sensible return of protection or security. The learned Greeks were perhaps the first to anticipate, and certainly not the last to avoid, their country's destruction. The council of Florence brought many of them into Italian connexions, and held out at least a temporary accommodation of their conflicting opinions. Though the Roman pontiffs did nothing, and probably could have done nothing effectual, for the empire of Constantinople, they were very ready to protect and reward the learning of individuals. To Eugenius IV., to Nicolas V., to Pius II., and some other popes of this age, the Greek exiles were indebted for a patronage which they repaid by splendid services in the restoration of their native literature throughout Italy. Bessarion, a disputant on the Greek side in the council of Florence, was well content to renounce the doctrine of single procession for a cardinal's hat; a dignity which he deserved for his learning, if not for his piety. Theodore Gaza, George of Trebizond, and Gemistus Pletho, might equal Bessarion in merit, though not in honours. They all, however, experienced the patronage of those admirable protectors of letters, Nicolas V., Cosmo de' Medici, or Alfonso king of Naples. These men emigrated before the final destruction of the Greek empire; Lascaris and Musurus, whose arrival in Italy was posterior to that event, may be deemed perhaps still more conspicuous; but as the study of the Greek language was already restored, it is unnecessary to pursue the subject any farther.

The Greeks had preserved, through the course of the middle ages, their share of ancient learning with more fidelity and attention than was shown in the west of Europe. Genius indeed, or any original excellence, could not well exist along with their cowardly despotism and their contemptible theology, more corrupted by frivolous subtleties than that of the Latin church. The spirit of persecution, naturally allied to despotism and bigotry, had nearly, during one period, extinguished the lamp, or at least reduced the Greeks to a level with the most ignorant nations of the west. In the age of Justinian, who expelled the last Platonic philosophers, learning began rapidly to decline; in that of Heraclius, it had reached a much lower point of degradation; and for two centuries, especially while the worshippers of images were persecuted with unrelenting intolerance, there is almost a blank in the annals of Grecian literature.* But about the mid-

* Hody places the commencement of Chrysoloras's teaching as early as 1391, p. 3. But Tiraboschi, whose research was more precise, fixes it at the end of 1396 or beginning of 1397, t. vii., p. 126.

† Tiraboschi, t. vi., p. 102. Roscoe's Lorenzo de' Medici, vol. i., p. 43

* The authors most conversant with Byzantine learning agree in this. Nevertheless, there is one manifest difference between the Greek writers

dle of the ninth century it revived pretty suddenly, and with considerable success.* Though, as I have observed, we find in very few instances any original talent, yet it was hardly less important to have had compilers of such erudition as Photius, Suidas, Eustathius, and Tzetzes. With these certainly the Latins of the middle ages could not place any names in comparison. They possessed, to an extent which we cannot precisely appreciate, many of those poets, historians, and orators of ancient Greece, whose loss we have long regretted, and must continue to deem irretrievable. Great havoc, however, was made in the libraries of Constantinople at its capture by the Latins; an epoch from which a rapid decline is to be traced in the literature of the eastern empire. Solecisms and barbarous terms, which sometimes occur in the old Byzantine writers, are said to deform the style of the fourteenth and fifteenth centuries.† The Turkish ravages and destruction of monasteries ensued; and in the cheerless intervals of immediate terror, there was no longer any encouragement to preserve the monuments of an expiring language, and of a name that was to lose its place among nations.*

That ardour for the restoration of classical literature which animated Italy in

the worst period, such as the eighth century, and those who correspond to them in the west. Syncellus, for example, is of great use in chronology, because he was acquainted with many ancient histories now no more. But Bede possessed nothing which we have lost; and his compilations are consequently altogether unprofitable. The eighth century, the sæculum iconoclasticum of Cave, low as it was in all polite literature, produced one man, St. John Damascenus, who has been deemed the founder of scholastic theology, and who at least set the example of that style of reasoning in the East. This person, and Michael Psellus, a philosopher of the eleventh century, are the only considerable men as original writers in the annals of Byzantine literature.

* The honour of restoring ancient or heathen literature is due to the Cesar Bardas, uncle and minister of Michael II. Cedrenus speaks of it in the following terms: επεμελησθη δε και της εξω σοφιας (ην γαρ εκ πολλου χρονου παραβρυεισα, και προς το μηδεν ὁλως χωρησασα τη των κρατουντων αργια και αμυθια), διατριβας εκαστη των επιστημων αφορισας, των μεν αλλων ὑπη περ ετυχε, της δ' επι πασων εποχου φιλοσοφιας κατ' αυτα τα βασιλεια εν τη Μαγναυρᾳ· και ουτω εξ εκεινου ανηβασκειν αἱ επιστημαι ηρξαντο, κ. τ. λ.—Hist. Byzant. Script. (Lutet.), t. x., p. 547. Bardas found out and promoted Photius, afterward patriarch of Constantinople, and equally famous in the annals of the church and of learning. Gibbon passes perhaps too rapidly over the Byzantine literature, chap. 53. In this, as in many other places, the masterly boldness and precision of his outline, which astonish those who have trodden parts of the same field, are apt to escape an uninformed reader.

† Du Cange, Præfatio ad Glossar. Græcitatis Medii Ævi. Anna Comnena quotes some popular lines, which seem to be the earliest specimen extant of the Romaic dialect, or something approaching it, as they observe no grammatical inflection, and bear about the same resemblance to ancient Greek that the worst law charters of the ninth and tenth centuries do to pure Latin. In fact, the Greek language seems to have declined much in the same manner as the Latin did, and almost at as early a period. In the sixth century, Damascius, a Platonic philosopher, mentions the old language as distinct from that which was vernacular, την αρχαιαν γλωτταν ὑπερ την ιδιωτην μελετουσι.—Du Cange, ibid., p. 11. It is well known that the popular, or *political* verses of Tzetzes, a writer of the twelfth century, are accentual; that is, are to be read, as the modern Greeks do, by treating every acute or circumflex syllable as long, without regard to its original quantity. This innovation, which must have produced still greater confusion of metrical rules than it did in Latin, is much older than the age of Tzetzes; if, at least, the editor of some notes subjoined to Meursius's edition of the Themata of Constantine Porphyrogenitus (Lugduni, 1617) is right in ascribing certain political verses to that emperor, who died in 959. These verses are regular accentual trochaics. But I believe they have since been given to Constantine Manasses, a writer of the eleventh century.

According to the opinion of a modern traveller (Hobhouse's Travels in Albania, letter 33), the chief corruptions which distinguish the Romaic from its parent stock, especially the auxiliary verbs, are not older than the capture of Constantinople by Mahomet II. But it seems difficult to obtain any satisfactory proof of this; and the auxiliary verb is so natural and convenient, that the ancient Greeks may probably, in some of their local idioms, have fallen into the use of it; as Mr. H. admits they did with respect to the future auxiliary θελω. See some instances of this in Lesbonax περι αχηματων, ad finem Ammonii, curâ Valckenaëri.

* Photius (I write on the authority of M. Heeren) quotes Theopompus, Arrian's history of Alexander's Successors, and of Parthia, Ctesias, Agatharcides, the whole of Diodorus Siculus, Polybius, and Dionysius of Halicarnassus, twenty lost orations of Demosthenes, almost two hundred of Lysias, sixty-four of Isæus, about fifty of Hyperides. Heeren ascribes the loss of these works altogether to the Latin capture of Constantinople, no writer subsequent to that time having quoted them.—Essai sur les Croisades, p. 413. It is difficult, however, not to suppose that some part of the destruction was left for the Ottomans to perform. Æneas Sylvius bemoans, in his speech before the diet of Frankfort, the vast losses of literature by the recent subversion of the Greek empire. Quid de libris dicam, qui illic erant innumerabiles, nondum Latinis cogniti! . . . . . Nunc ergo, et Homero et Pindaro et *Menandro* et omnibus illustrioribus poetis, secunda mors erit. But nothing can be inferred from this declamation, except, perhaps, that he did not know whether Menander still existed or not.—Æn. Syl., Opera, p. 715; also p. 881. Harris's Philological Inquiries, part iii., c. 4. It is a remarkable proof, however, of the turn which Europe, and especially Italy, was taking, that a pope's legate should, on a solemn occasion, descant so seriously on the injury sustained by profane literature. A useful summary of the lower Greek literature, taken chiefly from the Bibliotheca Græca of Fabricius, will be found in Berington's Literary History of the Middle Ages, Appendix I.; and one rather more copious in Schœll, Abrégé de la Littérature Grecque (Paris, 1812).

Literature not much improved beyond Italy.

the first part of the fifteenth century, was by no means common to the rest of Europe. Neither England, nor France, nor Germany seemed aware of the approaching change. We are told that learning, by which I believe is only meant the scholastic ontology, had begun to decline at Oxford from the time of Edward III.* And the fifteenth century, from whatever cause, is particularly barren of writers in the Latin language. The study of Greek was only introduced by Grocyn and Linacer under Henry VII., and met with violent opposition in the university of Oxford, where the unlearned party styled themselves Trojans, as a pretext for abusing and insulting the scholars.† Nor did any classical work proceed from the respectable press of Caxton. France, at the beginning of the fifteenth age, had several eminent theologians; but the reigns of Charles VII. and Louis XI. contributed far more to her political than her literary renown. A Greek professor was first appointed at Paris in 1458, before which time the language had not been publicly taught, and was little understood.‡ Much less had Germany thrown off her ancient rudeness. Æneas Sylvius indeed, a deliberate flatterer, extols every circumstance in the social state of that country; but Campano, the papal legate at Ratisbon in 1171, exclaims against the barbarism of a nation where very few possessed any learning, none any elegance.◊ Yet the progress of intellectual cultivation, at least in the two former countries, was uniform, though silent; libraries became more numerous, and books, after the happy invention of paper, though still very scarce, might be copied at less expense. Many colleges were founded in the English as well as foreign universities during the fourteenth and fifteenth centuries. Nor can I pass over institutions that have so eminently contributed to the literary reputation of this country, and that still continue to exercise so conspicuous an influence over her taste and knowledge, as the two great schools of grammatical learning, Winchester and Eton; the one founded by William of Wykeham, bishop of Winchester, in 1373, the other, in 1432, by King Henry the Sixth.*

Invention of printing

But while the learned of Italy were eagerly exploring their recent acquisitions of manuscripts, deciphered with difficulty, and slowly circulated from hand to hand, a few obscure Germans had gradually perfected the most important discovery recorded in the annals of mankind. The invention of printing, so far from being the result of philosophical sagacity, does not appear to have been suggested by any regard to the higher branches of literature, or to bear any other relation than that of coincidence to their revival in Italy. The question, why it was struck out at that particular time, must be referred to that disposition of unknown causes which we call accident. Two or three centuries earlier, we cannot but acknowledge the discovery would have been almost equally acceptable. But the invention of paper seems to have naturally preceded those of engraving and printing. It is generally agreed, that playing cards, which have been traced far back in the fourteenth century gave the first notion of taking off impressions from engraved figures upon wood. The second stage, or rather second application of this art, was the representation of saints and other religious devices, several instances of which are still extant. Some of these are accompanied with an entire page of illustrative text, cut into the same wooden block. This process is indeed far removed from the invention that has given immortality to the names of Fust, Schœffer, and Guttenburg, yet it probably led to the consideration of means whereby it might be rendered less operose and inconvenient. Whether moveable wooden characters were ever employed in any entire work is very questionable; the opinion that referred their use to Laurence Coster of Haarlem not

* Wood's Antiquities of Oxford, vol. i., p. 537.
† Roper's Vita Mori, ed. Hearne, p. 75.
‡ Crevier, t. iv., p. 243; see too p. 46.
◊ Incredibilis ingeniorum barbaries est; rarissimi literas norunt, nulli elegantiam.—Papiensis Epistolæ, p. 377. Campano's notion of elegance was ridiculous enough. Nobody ever carried farther the pedantic affectation of avoiding modern terms in his latinity. Thus, in the life of Braccio da Montone, he renders his meaning almost unintelligible by excess of classical purity. Braccio boasts se nunquam deorum immortalium templa violâsse. Troops committing outrages in a city are accused virgines vestales incestâsse. In the terms of treaties, he employs the old Roman forms; exercitum trajicito—oppida pontificis sunto, &c. And with a most absurd pedantry, the ecclesiastical state is called Romanum imperium.—Campani Vita Braccii, in Muratori, Script. Rer. Ital., t. xix.

* A letter from Master William Paston at Eton (Paston Letters, vol. i., p. 299) proves that Latin versification was taught there as early as the beginning of Edward IV.'s reign. It is true that the specimen he rather proudly exhibits does not much differ from what we denominate nonsense verses. But a more material observation is, that the sons of country gentlemen living at a considerable distance were already sent to public schools for grammatical education.

having stood the test of more accurate investigation. They appear, however, in the capital letters of some early printed books. But no expedient of this kind could have fulfilled the great purposes of this invention, until it was perfected by founding metal types in a matrix or mould, the essential characteristic of printing, as distinguished from other arts that bear some analogy to it.

The first book that issued from the presses of Fust and his associates at Mentz was an edition of the Vulgate, commonly called the Mazarine Bible, a copy having been discovered in the library that owes its name to Cardinal Mazarin at Paris. This is supposed to have been printed between the years 1450 and 1455.* In 1457 an edition of the Psalter appeared, and in this the invention was announced to the world in a boasting colophon, though certainly not unreasonably bold.† Another edition of the Psalter, one of an ecclesiastical book, Durand's account of liturgical offices, one of the Constitutions of Pope Clement V., and one of a popular treatise on general science, called the Catholicon, fill up the interval till 1462, when the second Mentz Bible proceeded from the same printers.‡ This, in the opinion of some, is the earliest book in which cast types were employed; those of the Mazarine Bible having been cut with the hand. But this is a controverted point. In 1465, Fust and Schœffer published an edition of Cicero's Offices, the first tribute of the new art to polite literature. Two pupils of their school, Sweynheim and Pannartz, migrated the same year into Italy, and printed Donatus's grammar, and the works of Lactantius, at the monastery of Subiaco in the neighbourhood of Rome.§ Venice had the honour of extending her patronage to Jonn of Spira, the first who applied the art on an extensive scale to the publication of classical writers.* Several Latin authors came forth from his press in 1470; and during the next ten years, a multitude of editions were published in various parts of Italy. Though, as we may judge from their present scarcity, these editions were by no means numerous in respect of impressions, yet, contrasted with the dilatory process of copying manuscripts, they were like a new mechanical power in machinery, and gave a wonderfully accelerated impulse to the intellectual cultivation of mankind. From the era of these first editions proceeding from the Spiras, Zarot, Janson, or Sweynheim, and Pannartz, literature must be deemed to have altogether revived in Italy. The sun was now fully above the horizon, though countries less fortunately circumstanced did not immediately catch his beams; and the restoration of ancient learning in France and England cannot be considered as by any means effectual even at the expiration of the fifteenth century. At this point, however, I close the present chapter. The last twenty years of the middle ages, according to the date which I have fixed for their termination in treating of political history might well invite me by their brilliancy to dwell upon that golden morning of Italian literature. But, in the history of letters, they rather appertain to the modern than the middle period; nor would it become me to trespass upon the exhausted patience of my readers by repeating what has been so often and so recently told, the story of art and learning that has employed the comprehensive research of a Tiraboschi, a Ginguené, and a Roscoe.

* De Bure, t. i., p. 30. Several copies of this book have come to light since its discovery.

† Idem, t. i., p. 71.

‡ Mém. de l'Acad. des Inscriptions, t. xiv., p. 265. Another edition of the Bible is supposed to have been printed by Pfister at Bamberg in 1459.

§ Tiraboschi, t. vi., p. 140.

* Sanuto mentions an order of the senate in 1469, that John of Spira should print the epistles of Tully and Pliny for five years, and that no one else should do so.—Script. Rerum Italic., t. xxii. p. 1189.

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